PROCEEDINGS

RELATIVE TO

AN INVESTIGATION INTO TRANSACTIONS

CONNECTED WITH AN

ABUSE OF PATRONAGE.

East India company (England)

PROCEEDINGS

OF THE

COURT OF DIRECTORS

AND OF A

SECRET SELECT COMMITTEE

APPOINTED BY THE COURT,

On the 2d May 1827,

TO INVESTIGATE TRANSACTIONS CONNECTED WITH AN ABUSE OF PATRONAGE;

TOGETHER WITH A

REPORT OF THE TRIAL

IN THE

COURT OF KING'S BENCH, BY A SPECIAL JURY, BEFORE THE RIGHT HON. LORD TENTERDEN,

On the 6th March 1828,

THE KING on the Prosecution of the EAST-INDIA COMPANY,

AGAINST

SAMUEL SUTTON and OTHERS.

LONDON:

PRINTED BY ORDER OF THE GENERAL COURT, FOR THE INFORMATION OF THE PROPRIETORS,

By J. L. Cox, Great Queen Street, Lincoln's-Inn Fields.

1828.

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A45

HENRY MORSE STEPHENS

2C

AT A

GENERAL COURT

OF THE UNITED COMPANY OF MERCHANTS OF ENGLAND TRADING TO THE EAST-INDIES,

Held at their House in Leadenhall Street,

On Wednesday, the 28th May 1828.

ORDERED:

That the whole of the proceedings which have been communicated to the General Court, respecting the cases of Mr. Edward Drake Back and Cadet Benjamin Bale, be printed for the information of the Proprietors.

510646

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No. I.

AT A

GENERAL COURT

OF THE UNITED COMPANY OF MERCHANTS OF ENGLAND TRADING TO THE EAST-INDIES,

Held on Wednesday, the 19th March 1828.

No. I.

General Court, 19Mar.1828.

The CHAIRMAN acquainted the Court that a prosecution having been instituted by the Court of Directors, in the Court of King's Bench, against certain parties for the sale of a Cadetship, the trial came on in that Court on the 6th instant; and the Chairman then laid before the Proprietors the short-hand writer's notes of the proceedings at the trial.

Vide page 81.

No. II.

AT A

COURT OF DIRECTORS,

Held on Wednesday, the 2d April 1828.

No. II.

Court of Directors, 2 April 1828.

Resolved Unanimously, That the whole of the papers which have been laid before this Court, regarding the case of Mr. Edward Drake Back and that of Cadet Bale, whom the Court have resolved to recall from Madras, be laid before the first General Court of Proprietors which shall be held after the passing of this Resolution.

No. III.

AT A

GENERAL COURT

OF THE UNITED COMPANY OF MERCHANTS OF ENGLAND TRADING TO THE EAST-INDIES,

Held on Wednesday, the 28th May 1828.

No. III.

General Court, 28 May 1828.

The Chairman acquainted the Court, that the Court of Directors had felt it to be their duty, in reference to recent proceedings in the Court of King's Bench against certain parties for the sale of a Cadetship in the Company's Service, to lay before the Proprietors the whole of the papers which have been laid before the Directors regarding the case of Mr. Edward Drake Back, for whom the Cadetship in question was intended; and also certain papers relating to the case of Cadet Benjamin Bale, whom the Court of Directors have resolved to recall from Madras, in consequence of its having been proved that his appointment was procured by corrupt means.

The Chairman then laid before the Court the papers relating to the cases of Mr. Edward Drake Back and Cadet Bale.

No. IV.

AT A

SECRET COURT OF DIRECTORS,

Held on Wednesday, the 2d May 1827.

No. IV.

Secret Court of Directors, 2 May 1827.

The Chairman from the Committee of Correspondence laid before the Court a Secret Minute of the Committee held this day, on the subject of the

appointment

No. IV.

Secret Court of Directors, 2 May 1827.

appointment of a Cadetship having been offered and obtained for a sum of money.

The said Minute of the Committee of Correspondence having been read,

It was, on a Motion,

Resolved Unanimously, That in accordance with the recommendation of the Committee of Correspondence, a Select Committee be appointed, to consist of the Chairman and Deputy Chairman and the Senior Member of the Committees of Correspondence, Buying and Warehouses, and Shipping, *viz.*

George Smith, Esq. M.P.
J. G. Ravenshaw, Esq.
J. Baillie, Esq. M.P.

for the purpose of forthwith investigating the circumstances alluded to in the minute now read; and that the Select Committee be authorized to adopt such measures for bringing the offenders to justice, with the advice of the Law Officers of the Company, as the Committee may see fit, and to report to the Court when the Committee may deem it expedient.

No. V.

AT A

SECRET COMMITTEE OF CORRESPONDENCE,

The 2d May 1827.

No. V.

Secret Committee, 2 May 1827.

The Chairman and Deputy Chairman feel it necessary to call the serious and immediate attention of the Committee to a matter of great delicacy and importance.

Early in the month of February last, the late Chairman received a letter from a gentleman in the country, a stranger to him, stating that he had recently received the offer of a Cadetship for a sum of money: that he was himself ignorant of such matters, but that, from circumstances attending the negociation,

No V.

Secret Committee, 2 May 1827.

gociation, he was induced to think the proposed transaction not altogether as it should be. That if it were right and fair, he should endeavour to avail himself of the offer: that if otherwise, he should be obliged by being so informed, when he should, of course, relinquish it.

"The circumstances thus brought to the attention of the late Chairs, and the plain and ingenuous manner in which they were stated, appeared to them to render it an imperative duty to lose no time in taking measures to investigate the facts to which allusion had been made; and, with that view, a confidential officer of the Company was directed to repair immediately to the writer of the letter in question, for the purpose of obtaining from him all the information which he could afford, in reference to the means which had been proposed to him for the accomplishment of the object.

The circumstances which were detailed in consequence of the interview which ensued, led to such an irresistible presumption that a traffic, of the description suggested, was systematically pursued or pretended, by parties of a greater or less degree of apparent respectability, that the late Chairs felt it incumbent upon them to pursue such measures as appeared to them most likely to lead to a knowledge of the guilty parties; and with the advice and assistance of the Company's Solicitor, who has communicated from time to time with the Company's Standing Counsel, the late and present Chairs have pursued a course, by which they are now in possession of the undoubted fact of the appointment of a Cadet having been obtained, in consequence of the deposit and expected payment of a large sum of money.

The Chairs forbear to trouble the Committee, in this stage of the case, with any detail of the proceedings which have taken place, or of the circumstances which have been disclosed; but they submit to the judgment of the Committee the expediency of recommending the Court immediately to appoint a Select Committee, for the purpose of investigating the case, and of adopting such measures for bringing the offenders to justice, as, under the advice of the Law Officers of the Company, may be deemed expedient. Whereupon,

It was, on a Motion,

Resolved Unaminously, That it be recommended to the Court to appoint a Select Committee, for the purpose of investigating into the transaction alluded to in the statement now made to the Committee by the Chairman and Deputy Chairman

No. V.

Secret Committee, 2 May 1827.

Chairman, and to adopt such measures for bringing the offenders to justice, as, under the advice of the Law Officers of the Company, they may deem expedient.

The Committee immediately adjourned to attend the Court of Directors.

No. VI.

AT A

SECRET COURT OF DIRECTORS,

Held on Friday, 4th of May 1827.

No. VI.

Secret Court, 4 May 1827.

The Chairman presented to the Court a Report from the Secret Select Committee that was appointed on the 2d instant, in which the Committee state that, in pursuance of their appointment, they proceeded on Wednesday last to investigate the circumstances connected with the transaction adverted to in the Minute of the Secret Committee of Correspondence which was laid before the Court on that day. That the said investigation was continued during yesterday and this morning. That, from the documents and evidence which have already been submitted to them, they are unanimously of opinion, that a sum of money to a considerable amount has been demanded, and in part received, as the consideration for procuring the appointment of a Cavalry Cadetship; and that, in the exercise of the powers vested in them by the Court, they have instructed the Law Officers of the Company to submit the names of such of the parties implicated in this transaction as they may deem it expedient to proceed against; adding, that they purposely forbear, in the present stage of the proceedings, from entering into any of the particulars which have been elicited in the course of the investigation.

The said Report was read.

No. VII.

AT A

SECRET SELECT COMMITTEE,

APPOINTED BY THE COURT

For the purpose of investigating the Transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827,

Held on Friday, the 4th May 1827.

No. VII.

Report of Secret Select Committee. 4 May 1827.

Your Committee report, that in pursuance of their appointment, they proceeded on Wednesday last to investigate the circumstances connected with the transaction adverted to in the Minute of the Secret Committee of Correspondence, which was laid before the Court on that day. That the said investigation was continued during yesterday and this morning; and, from the documents and evidence which have already been submitted to them, the Committee are unanimously of opinion, that a sum of money to a considerable amount has been demanded, and in part received, as the consideration for procuring the appointment of a Cavalry Cadetship.

Your Committee, in the exercise of the powers vested in them by the Court, have accordingly instructed the Law Officers of the Company to submit to your Committee the names of such of the parties implicated in this transaction, against whom they may deem it expedient to recommend the adoption of legal proceedings.

Your Committee purposely forbear, in the present stage of the proceedings, from entering at all, in this report, into any of the particulars which have been elicited in the course of the investigation.

(Signed) H. Lindsay,
J. Pattison,
Geo. Smith,
J. G. Ravenshaw,
J. Baillie.

No. VIII.

AT A

SECRET COURT OF DIRECTORS,

Held on Wednesday, the 16th May 1827.

No. VIII.

Secret Court of Directors, 16 May 1827.

The Chairman from the Secret Select Committee appointed by the Court on the 2d instant, laid before the Court a second Report of the Committee, unanimously agreed to this day, detailing the further proceedings which they had seen fit to adopt, in pursuance of the powers vested in them by the terms of their appointment, and stating, that the Law Officers of the Company have been instructed to prefer bills of indictment against the parties therein alluded to forthwith.

The said Report was read: whereupon C. E. Prescott, Esq. withdrew.

A motion was then made; and the question thereon being put,

It was,

Resolved Unanimously, That the thanks of this Court be given to the Secret Select Committee, for the manner in which they have discharged the duty imposed upon them, in their proceedings as detailed in the Reports now before the Court; and the Court desire to assure the Select Committee of their determination to afford every aid, in the prosecution of an inquiry so deeply affecting the honour and character of the Court of Directors, and of its Members individually.

No. IX.

AT A

SECRET SELECT COMMITTEE,

APPOINTED BY THE COURT

For the purpose of investigating the Transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827,

Held on Wednesday, the 16th May 1827.

No. IX.

Report of Secret Select Committee, 16 May 1827.

Your Committee, on the 4th instant, reported to the Court their unanimous opinion, that a sum of money to a considerable amount had been demanded, and in part received, as the consideration for procuring the appointment of a cavalry Cadetship; and that, in the exercise of the powers vested in your Committee, they had instructed the Law Officers of the Company to submit the names of such of the parties implicated in the transaction, against whom they may deem it expedient to recommend the adoption of legal proceedings.

Your Committee have now to report, that in consequence of the instructions so given, the Company's Solicitor laid before your Committee an opinion of Mr. Serjeant Bosanquet, dated the 10th instant, which is as follows:

" I have attentively read and considered the collection of papers referred to " me by the Select Committee, and I am of opinion, that they prove a nego- " ciation for obtaining a Cadetship to have been carried on by several persons, " in the immediate expectation of pecuniary profit, and that such a negocia- " tion amounts to a misdemeanor, within the provision of the 49th Geo. III., " cap 126, sec. 4."

" The persons directly shewn to be concerned in such corrupt negociation " are named Sutton, Anstice, Andrews, Despard, Tyndale, Gibbons, and " Wright.

" Of

No. IX.

Report of Secret Select Committee. 16 May 1827.

" Of the propriety of prosecuting these persons, unless any one of them " should be disposed to save himself by giving valuable information, I " entertain no doubt. A most important question, however, remains: how " far a Director, through whose agency the nomination was obtained, is " implicated in the corrupt negociation which has been carried on? No " suspicion whatever appears to me to attach to the nominating Director " (Colonel Toone): but the person through whose immediate application the " nomination was obtained was himself a Director. Whether he did, or did " not, expect to participate personally in any pecuniary profit to be made by " the appointment, is immaterial, if he knew that any of those whom he " assisted in endeavouring to obtain the appointment, were acting in the " expectation of making money by it; the Act of Parliament having declared " all those guilty of a misdemeanor, who wilfully and knowingly aid, abet, " or assist others in such a negociation. Of the existence of a corrupt nego- " ciation, and of the effectual assistance rendered immediately to Sutton " by Mr. Prescott, the Director, there is no doubt: the only question is, " whether such assistance was rendered with a knowledge that the nego- " ciator, Sutton, was acting in expectation of a reward. Direct evidence " of this knowledge is hardly to be expected. The proof of it must be " sought in the conduct of the individual, and his acts with reference to " the whole transaction must be examined, for the purpose of ascertaining " whether, upon a fair and just review of all the circumstances, his conduct " appears to have been that of a Director intending to confer his patronage " upon an honourable friend, but having been imposed upon by that friend, or " that of a person voluntarily allowing his friend the opportunity of abusing " the patronage conferred upon him to his own advantage.

" The first material feature in the case is the declaration signed by Mr. " Prescott, as the person procuring the nomination from the Director, Colonel " Toone, by which he declares, *upon his honour*, that he has received the nomi- " nation gratuitously, and given it gratuitously to Mr. Edward Drake Back, with " *whose family and connexions he is well acquainted:* it being clearly established " and admitted, that Mr. Prescott is an absolute stranger to the young man and " his family, and never saw any one of them in his life, till he saw the young " man himself at the East-India House, just before the appointment was

" stopped.

No. IX.

Report of Secret Select Committee, 16 May 1827.

" stopped. This declaration of the person recommending is the principal " security provided against an improper disposal of appointments. The " nominating Director relies, as he necessarily must do, upon the honour of " the person recommending, for an assurance that the appointment is given " by the latter to a young man whose family and connexions he knows. But " if the appointment may be given upon the representation of a third person, " who signs no declaration, the object of the intended security is totally " defeated. Whatever excuse might be made by any other person, on the " ground of mistake or incaution, such excuse can hardly be admitted on " behalf of a Director, who must necessarily be acquainted with the nature " and object of the declaration, and who, if he places himself in the situation " of a person recommending, instead of nominating, as a Director, upon the " recommendation of another, is bound to take care that he is in a situation " to give all the same assurance upon his personal knowledge, which is " expected from those who recommend to a nominating Director. In the " present case, however, Mr. Prescott has not merely signed the printed " declaration, containing an assurance directly contrary to the truth, but has, " in personal conversation with Colonel Toone, according to the testimony " of that gentleman, declared that the young man was a gentleman, the son " of a most respectable clergyman in Devonshire, and that Colonel Toone " might depend, *upon his honour*, that all was right. That he *knew* the " gentleman was *as fine a young man* as any in England, and that he *knew his* " *father*. The father, in fact, had not lived in Devonshire for eighteen years; " the son does not correspond with the description here given of him; and Mr. " Prescott, at that time, had never seen either of them.

" It is here, moreover, to be remarked, that Colonel Toone's caution had " been awakened, by hearing that a person of the name of Frederick, formerly " appointed by Mr. Prescott, had been found unfit for the service, and that " these assurances of Mr. Prescott were made in consequence of the impres- " sion produced by that circumstance to satisfy Colonel Toone's mind; so " that Colonel Toone could not fail to believe that, in making such represen- " tation, Mr. Prescott was speaking of matters within his personal knowledge. " It appears, also, that Colonel Toone, on Saturday the 28th April, directed " Mr. Abington, of the Cadet-Office, to pass Captain Prescott's youth without

" delay,

No. IX.

Report of Secret Select Committee, 16 May 1827.

" delay, as he was near twenty-two, saying that he would sign the papers on " Wednesday; and in a postscript, that he would sign them that afternoon if " sent to him. Colonel Toone has not expressly stated that this representation " respecting the age of the cadet was made to him by Mr. Prescott, but he " does not speak of any communication upon the subject with any other per- " son; and if Mr. Prescott pressed the passing the Cadet on account of his " age, it is an additional circumstance of suspicion, since the youth will not " be of the age of twenty-two till October next, as appears by the papers " themselves.

" Colonel Toone afterwards forbade the passing of the cadet until he should " have seen him. Within little more than two months before the nomination " in question, Mr. Prescott had given another cadetship to the same Mr. Sut- " ton, in favour of a young man of the name of Bale; and by the course " which has been taken, of making Mr. Prescott the person recommending, " instead of Sutton, the name of the latter in the papers at the Cadet-Office is " kept out of sight upon this second occasion, though he is, in truth, the person " upon whose representation alone Mr. Prescott professes to have acted. The " circumstances under which the nomination of Bale was obtained do not " fully appear: but there is much reason to suspect that it was disposed " of by Sutton, in conjunction with some one, at least, of the persons " concerned in the present negociation. It is certainly remarkable, that " Mr. Prescott having so recently given a Cadetship to Sutton, which he " borrowed of another Director, should again apply for another to Colonel " Toone, and that the mode of appointment should be so managed as to avoid " the repetition of Sutton's name. In this last appointment, Mr. Prescott " appears to have been particularly active; for, besides the verbal representation " made to Colonel Toone above-mentioned, it appears that Mr. Prescott, con- " trary to the usual practice of the East-India House, obtained the papers from " the office on Saturday the 28th, after they had been partially filled up, and " that they were not returned until Wednesday following, and then not by him. " The papers were put into the hands of Sutton, and the use made of his pos- " session of them was to endeavour to obtain a delivery of the remaining " halves of the two bank notes for £500 and £300, and actually to obtain a " delivery of the remaining half of the latter.

" For

No. IX.

Report of Secret Select Committee, 16 May 1827.

"For the active interest which Mr. Prescott has taken in obtaining this "second appointment for Sutton, no particular motive is assigned.

"All these circumstances being taken into consideration, does it appear that "Mr. Prescott, in his part of this transaction, which was clearly corrupt in "its origin and progress, conducted himself as a Director would act, who be-"lieved that he was disposing of the appointment in a fair and honourable way, "in behalf of a person who was to receive it gratuitously, or as a person "would act who felt conscious that the man at whose disposal he placed it "intended to make a profit of it to himself? This question I have long and "anxiously considered, and am unable to bring my mind to the conclusion, "that the conduct of Mr. Prescott is consistent with the former view of the "subject. In this review of the facts, I have not adverted to the examinations "of the parties themselves before the Committee. These examinations disclose "the disposition of a third cadetship, upon the application of Sutton, to a Mrs. "Pogson; and some of the answers are most extraordinary. Certainly they do "not create any favourable impression on my mind; but as it is very probable "that it would not be found advisable to produce them in evidence in case of "a prosecution, I have not relied upon them. My opinion is, that the facts "to which I have adverted afford grounds for preferring an indictment "against Mr. Prescott, for wilfully and knowingly aiding, abetting, and "assisting a negociation carried on by other persons, for obtaining an appoint-"ment, in the expectation of profit and reward; and I think that a Grand "Jury would find the bill. Whether such an interpretation could be put upon "Mr. Prescott's conduct, as to obtain an acquittal at the trial, I cannot pre-"tend to say; but I think it is clear, that the misconduct which leads to the "inference of the guilty connivance, whether conclusively sufficient to esta-"blish that charge or not, amounts to a breach of duty as a Director, in a matter "of the deepest importance, both to the character of the Court of Directors "and to the best interests of the Company; and it is, therefore, my humble "opinion, that the case is a proper subject for investigation in a criminal court.

"Lincoln's-Inn, (*Signed*) "J. B. Bosanquet."
"May 10, 1827."

Your Committee further report, that notwithstanding the respect which your Committee would be at all times disposed to pay to the high authority of the

learned

No. IX.

Report of Secret Select Committee, 16 May 1827.

learned Serjeant, and notwithstanding the entire concurrence of your Committee in the conclusion submitted in the opinion so given, your Committee felt that, in a matter of so great delicacy and importance, so deeply affecting the character and the interests of a Member of the Direction, and so importantly and necessarily interesting to the whole Court, it was no less due to the Director in question and to the Court, than to the learned Counsel himself, whose official situation had imposed upon him the painful responsibility of thus advising your Committee, to desire that, before your Committee determined upon the course which they should pursue, the opinion of the Law Officers of the Crown should be obtained upon that part of the case in question, which involved the course of proceeding with reference to the Director whose name has thus been mentioned: and, with that view, your Committee directed the Company's Solicitor to obtain the opinion of his Majesty's Attorney and Solicitor General, jointly with that of Mr. Serjeant Bosanquet, "*Whether the*
"*facts adverted to afford grounds for preferring an indictment against Mr.*
"*Prescott, for wilfully and knowingly aiding, abetting, and assisting a negocia-*
"*tion carried on by other persons, for obtaining an appointment, in the expecta-*
"*tion of profit and reward.*"

The joint opinion of those three eminent Counsel, dated yesterday, has been this day laid before your Committee, and is in the following terms.

"We are of opinion, upon the facts stated to us, that there are grounds
"for preferring an indictment against Mr. Prescott upon the charge stated in
"the query. There seems to be very strong evidence against the other
"parties implicated, and the irregular conduct of Mr. Prescott exposes him to
"such a degree of suspicion, that it appears to us to be the duty of the
"Directors to put him also upon his defence in a court of justice.

"Westminster, (*Signed*) "J. Scarlett,
"May 15, 1827. "N. C. Tindal,
"J. B. Bosanquet."

Agreeing, as your Committee unanimously do, in the conclusion to which the learned Counsel have thus come, your Committee have felt it to be their imperative duty, in the exercise of the powers confided to them by the Court's Resolution of the 2d instant, to order the Company's Law Officers to take the necessary measures for preferring an indictment against the several parties implicated, and of including therein Charles Elton Prescott, Esq.

Your

No. IX.

Report of Secret Select Committee, 16 May 1827.

Your Committee having discharged this painful duty, they feel it to be due to Mr. Prescott to state to the Court, that that gentleman has addressed a letter to the Chairman, under date the 10th instant, expressing his anxious wish "that the most unreserved scrutiny be made, in any way the Committee "may deem best, regarding the mode in which he has disposed of the whole "of the patronage that has been allotted to him since he was chosen a "Director."*

Your Committee cannot conclude this Report, without expressing their entire and unanimous concurrence in the opinion expressed by the Company's Standing Counsel, that no suspicion whatever appears to attach to the nominating Director, Colonel Toone, whose conduct appears to your Committee to be wholly free from the slightest imputation of blame.

(Signed) H. Lindsay,
J. Pattison,
Geo. Smith,
J. G. Ravenshaw,
J. Baillie.

No. X.

AT A

COURT OF DIRECTORS,

Held on Wednesday, the 23d May 1827.

No. X.

Court of Directors, 23 May 1827.

Charles Elton Prescott, Esq., a Member of this Court, delivered in a letter, dated this day, submitting a statement of the circumstances under which he gave to Mr. Samuel Sutton the appointment of a Cavalry Cadetship, for the sale of which the Law Advisers of the Company have recommended that he (Mr. Prescott) should be included in an indictment to be preferred against certain parties; declaring that his conscience most fully acquits him of any and every thing improper in the transaction, except the omission to exercise sufficient caution and discretion; and stating that, should the Court resolve to sanction

* For this letter, vide page 17.

No. X.

Court of Directors, 23 May 1827.

sanction an indictment against him, and the Grand Jury should unfortunately think the case sufficiently strong for trial, he shall cease to attend the meetings of the Court until the trial, which he shall await with perfect confidence, that it will issue in his honourable acquittal of the remotest imputation of criminality; and shall also request, that any patronage which may be intermediately allotted to him may remain in suspense, until the result of the trial shall be known.

And the said letter having been read,

Mr. Prescott withdrew.

It was,

Ordered, That the letter from Mr. Prescott, now read, be referred to the consideration of the Secret Select Committee appointed on the 2d instant.

No. XI.

No. XI.

Letter from Mr. Prescott, 23 May 1827.

East-India House, May 23, 1827.

Gentlemen:

The Law Advisers of the Company having recommended that I should be included in an indictment to be preferred against certain parties supposed to be implicated in a negociation for the sale of a Cavalry Cadetship, I feel myself called upon to submit to you a brief statement of the circumstances under which I gave the appointment to Mr. Samuel Sutton, the individual who has so unhappily abused my friendship.

Mr. Sutton had been the most active and persevering of my friends, in the arduous canvas which obtained for me the honour of a seat in the Direction. When to this I add, that Mr. Sutton was so fortunate as to save the life of my son, I am persuaded that you will all admit that he had established the strongest claims on my gratitude and esteem.

I am, at the same time, fully aware, that however strong the claims of Mr. Sutton may have been, they would not have justified me in presenting to him

No. XI.

Letter from Mr. Prescott, 23 May 1827.

any portion of my patronage, if I had the least reason to think that he would not honourably use it. But whilst I appreciate, as fully as any of my colleagues, the important responsibility under which a Director is placed, not merely to be himself free from participation in corrupt practices, but also to take due care that his appointments are not placed in the hands of persons likely to misappropriate them, I must appeal to the candour of you, Gentlemen, whether it be possible, in all cases, to be secure against the abuse of confidence. The last case of a legal indictment for an abuse of patronage conclusively shews, that the confidence of a Director, eminently distinguished for the honour of his transactions and for the caution of his proceedings, was in that instance abused; and, in the present unfortunate case, if it be asked whether there was any thing connected with the character of Mr. Sutton that ought to have precluded me from trusting him with an appointment, I must beg leave to observe, that not only was that individual on terms of intimacy with me, but he was also most respectably connected, and associated in friendly intercourse with gentlemen and families of undoubted respectability, of whom several must be known to many of the Members of the Court.

I have said thus much, in the hope of removing all prejudice as to my knowledge of Mr. Sutton when the transaction now in question commenced. That Mr. Sutton has proved himself unworthy of any act of favour from me, I must fully allow and deeply lament; but the abuse of friendship is no reason against the manifestation of friendship, before I knew the individual to be even capable of abusing it.

In the month of April last, Mr. Sutton applied to me for a Cavalry Cadetship for the son of a Clergyman in the West of England, in whom he professed to feel the deepest interest, and with whose family and connexions Mr. Sutton stated himself to be well acquainted. At that time I had only one cavalry appointment unfilled, and that I had given away to Mr. Colin Campbell; I was, therefore, obliged to decline Mr. Sutton's application, telling him, at the same time, that he should have the next Cavalry appointment which fell to my patronage.

Mr. Sutton shortly afterwards stated, that as the young gentleman was upon the verge of twenty-two, any nomination which I might thereafter get would not be available for his benefit; and, under these circumstances, I was induced

to

No. XI.

Letter from Mr. Prescott, 23 May 1827.

to ask Colonel Toone to exchange an appointment which he then had for my next, with which application Colonel Toone most kindly complied.

The usual mode of effecting this exchange would have been to transfer the appointment from the patronage of Colonel Toone to my patronage, and for me to have given the nomination in the customary form to Mr. Sutton, he signing the declaration of personal acquaintance with the family of the Cadet. Owing to the absence of Mr. Abington from indisposition, a mistake occurred, and instead of adopting the usual course, Colonel Toone was considered as the nominating Director, and I as the intermediate party between the Director and the Cadet. The papers were so signed accordingly. Here, Gentlemen, I have no hesitation in admitting that I did not exercise sufficient caution. I ought fully to have examined the papers before I signed them; and discovering the error, it should have been corrected at the time.

Gentlemen, need I say how apt most of us are to consider papers of this kind as matters of form, and to sign them in haste and without much deliberation. Where a Director feels and believes that all is right, how natural is it to sign the papers, which the officer states to be correct. You will not, I am persuaded, as men of honour yourselves, hold me responsible for the statement in a printed form, my signature to which is admitted by the Company's responsible officer to have been obtained in course, which that officer, at my request (a request which could never have been made, if I had had any indirect object to serve), undertook to correct, and which he was about to do when the papers were obtained, for the purpose of the inquiry.

Gentlemen: I have heard it intimated, that Colonel Toone has stated, that when the nomination was in progress, I expressed to him my personal knowledge of the individual for whom it was intended. All who know Colonel Toone must be satisfied of his honour, and that he is incapable of making an intentional mistatement; but I must be permitted to say, that however that gallant officer may have misunderstood a casual observation, I never could have intended to convey to his mind any thing further, than that I believed the family and connexions of the young man to be respectable. The papers indeed, from the mistake which I have explained, were calculated to lead Colonel Toone to suppose that there was a personal acquaintance between me and the Cadet, and this may have induced the Colonel to put a construction

on

No. XI.

Letter from Mr. Prescott, 23 May 1827.

on my observations which I never contemplated, and which, I am sure, he could never have entertained if the papers had been sent corrected. So soon as I had signed the papers, I gave them to Mr. Abington's assistant, desiring him to send them to Colonel Toone, and to instruct the messenger to bring them back, not to Mr. Abington but to me. This I did to save time, Mr. Sutton being anxious to have the appointment perfected. The papers were accordingly brought to me in a sealed packet directed to Mr. Abington, which, knowing its contents, I opened, and gave the papers to Mr. Sutton.

I have thus candidly explained to you, Gentlemen, all the circumstances within my knowledge connected with this transaction. I feel most sensibly that these circumstances have combined to place me in a most painful predicament, deeply affecting all the considerations which are most dear to me. It must be unnecessary for me to declare to you, that my conscience most fully acquits me of any and every thing improper, except the omission to exercise sufficient caution and discretion. Were it otherwise, Gentlemen, instead of continuing to associate myself officially with you, I should at once seek the retirement which conscious shame would suggest. But feeling, as I do, that I have committed no act inconsistent with my character as a man of honour and a Director of this Company, I shall continue in the discharge of my duty until the indictment shall be submitted to the Grand Jury: and if, unfortunately, that tribunal should think the case sufficiently strong for trial as against me, I shall, in deference to the feelings of my brother Directors, cease to attend the meetings of the Court until the trial, which I shall await with perfect confidence that it will issue in my honourable acquittal of the remotest imputation of criminality; and I shall also request, that any patronage which may be intermediately allotted to me, shall remain in suspense, until the result of the trial shall be known.

I have, for the moment, assumed that you have resolved to sanction an indictment against me, and that the statement with which I have troubled you was called for by the advice you have received; but I should be wanting to you, my respectable Colleagues, and to myself, if I did not respectfully remind you, that after all the evidence had been closed, it was declared in Court that no one of your own body was implicated in the illegality of the transaction, and therefore any change in the determination of the Court would

be

No. XI.

Letter from Mr. Prescott, 23 May 1827.

be referable only to legal opinions. But, permit me to say, that upon the matters of fact you are as competent to judge as any lawyers, however eminent; and upon what may belong to the honour of the Court your judgment would be superior, because you measure not according to the prejudices by which professional persons may be able to surround their facts, but according to their intrinsic force; and I have already stated the true character of the transaction, so far as I am concerned, in the conclusion to which you came before the legal men were consulted. I must, therefore, hope that the supposed necessity of adopting a course of severity inconsistent with your original opinion, will not be pursued at the expense of my reputation. You will forgive me for reminding you of the disadvantage under which I labour. That feeling and delicate sentiment, in which I should find a powerful advocate if any individual of your Court would become my judge, loses much of its force when shared by a collective body. To the whole Court it may appear a question of mere policy; but let me entreat you not to forget that to me it is imputation, stigma, heart-rending suspense; and whatever may be the result, if a prosecution is once instituted, I must feel that I have been charged with a base crime, inconsistent with my oath as a Director and my principles as a man of honour; and the libeller, who may not dare to renew the accusation against myself, may still point the finger of scorn against those who are dear to me, when I shall be no more.

In full reliance upon your justice and liberality,

I have the honour remain,

Gentlemen,

Your most obedient humble Servant,

(Signed) C. Elton Prescott.

To the Honourable the Court of Directors
of the East-India Company.

No. XII.

No. XII.

AT A

COURT OF DIRECTORS,

Held on Wednesday, the 30th May 1827.

No. XII.

Court of Directors, 30May 1827.

A Report from the Secret Select Committee appointed on the 2d instant, dated this day, was read; stating that, having entered into a consideration of the letter from Charles E. Prescott, Esq., they do not see any reason to alter the course of proceeding which, under the authority vested in the Committee by the Court, they had previously resolved to pursue; representing that the Committee do not think it necessary to advert to the observation contained in Mr. Prescott's letter, "that after all the evidence was closed, it was declared in "court that no one of your own body was implicated in the illegality of the "transaction," further than by remarking, that the opinions of the Committee, so far as they have been stated to the Court, are contained in their Reports laid before the Court on the 4th and 16th instant, which do not appear to the Committee to furnish any ground for such an inference; and adding, that in the consideration of the letter above-mentioned, the Committee have, as on all former occasions, consulted the Company's Law Officers, who are entirely of the opinion now submitted by the Committee.

No. XIII.

No. XIII.

AT A

SECRET SELECT COMMITTEE,

APPOINTED BY THE COURT

For the purpose of investigating the Transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827,

Held on Wednesday, the 30th May 1827.

No. XIII. Report of Secret Select Committee, 30May 1827.

Your Committee having entered into a consideration of the letter addressed to the Court by C. E. Prescott, Esq. and referred to your Committee on the 23d instant, report that they do not see any reason to alter the course of proceeding which, under the authority vested in your Committee by the Court, they had previously resolved to pursue, and of which they have already apprized the Court.

Your Committee do not think it necessary to advert to the observation contained in Mr. Prescott's letter, "that after all the evidence was closed, it was "declared in Court that no one of your own body was implicated in the ille-"gality of the transaction," further than by remarking, that the opinions of your Committee, so far as they have been stated to the Court, are contained in their Reports laid before the Court on the 4th and 16th instant, which do not appear to your Committee to furnish any ground for such an inference.

Your Committee think it right to add, that in the consideration of the letter above referred to, they have, as on all former occasions, consulted the Company's Law Officers, who are entirely of the opinion now submitted by your Committee.

(Signed) H. Lindsay,
J. Pattison,
Geo. Smith,
J. G. Ravenshaw,
J. Baillie.

No. XIV.

No. XIV.

AT A

SECRET COURT OF DIRECTORS,

Held on Wednesday, the 6th June 1827.

No. XIV.

Secret Court of Directors, 6 June 1827.

A Report from the Secret Select Committee appointed by the Court for the purpose of investigating the transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d ultimo, dated this day, was read; stating that, in accordance with the Committee's Resolution reported to the Court on the 16th ultimo, an indictment for a misdemeanor was preferred, on the 1st instant, against the several parties therein alluded to, before the London Grand Jury, who returned a true bill against all the defendants, and that the Committee have ordered the Company's Law Officers to pursue the necessary measures for bringing it to trial; representing that the parties against whom the bill has been found are:

Samuel Sutton,
William Andrews,
James Patten Anstice,
John Edward Despard,
Joseph Tyndale,
George Henry Gibbons,
Thomas Wright, and
Charles Elton Prescott, Esq.

and adding, that the Committee have been engaged in investigating the case of another Cadetship in which some of the same parties are concerned, and attending which there is matter of such strong suspicion, that the Committee feel it to be their duty to pursue the investigation to a close.

No. XV.

No. XV.

AT A

SECRET SELECT COMMITTEE,

APPOINTED BY THE COURT

For the purpose of investigating the Transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827,

Held on Wednesday, the 6th June 1827.

No. XV.

Report of Secret Select Committee, 6 June 1827.

Your Committee report, that in accordance with their Resolution reported to the Court on the 16th ultimo, an indictment for a misdemeanor was preferred on the 1st instant against the several parties therein alluded to, before the London Grand Jury, who returned a true bill against all the defendants; and your Committee have ordered the Company's Law Officers to pursue the necessary measures for bringing it to trial.

The parties against whom the bill has been found are:

Samuel Sutton,
William Andrews,
James Patten Anstice,
John Edward Despard,
Joseph Tyndale,
George Henry Gibbons,
Thomas Wright, and
Charles Elton Prescott, Esq.

Your Committee think it right to add, that the case of another Cadetship, in which some of the same parties are concerned (and to which the opinion of Mr. Serjeant Bosanquet, alluded to in the Report of your Committee of the 16th ultimo, adverts), has engaged much of the attention of your Committee, who are still investigating the circumstances of that appointment. They are not prepared to make any Report to the Court upon this case; but they feel

that

No. XV.

Report of Secret Select Committee, 6 June 1827.

that they ought to state, that there is matter of such strong suspicion attending it, that the Committee feel it incumbent upon them to pursue that investigation to a close.

(*Signed*) H. LINDSAY,
J. PATTISON,
J. G. RAVENSHAW,
J. BAILLIE.

No. XVI.

AT A

COURT OF DIRECTORS,

Held on Friday, the 7th March 1828.

No. XVI.

Court of Directors, 7 Mar. 1828.

A Letter from the Company's Solicitor, dated this day, stating that the indictment for a misdemeanor, referred to in the Report of the Secret Select Committee to the Court, dated the 6th June last, and which was subsequently removed into the Court of King's Bench by writ of *certiorari*, at the instance of Mr. William Andrews, one of the defendants, came on yesterday for trial at Guildhall, London, before Lord Tenterden and a Special Jury, and detailing the proceedings which took place on that occasion, was read.

No. XVII.

No. XVII.

Drapers' Hall, 7th March 1828.

No. XVII.

Letter from Company's Solicitor, 7 Mar. 1828.

Sir:

I have the honour to acquaint you, for the information of the Honourable Court of Directors, that the indictment for a misdemeanor, referred to in the Report of the Secret Select Committee to the Honourable Court of the 6th of June last, and which was subsequently removed into the Court of King's Bench by writ of *certiorari*, at the instance of Mr. William Andrews, one of the defendants, came on yesterday for trial at Guildhall, London, before Lord Tenterden and a Special Jury.

Previously to the sitting of the Court, five of the defendants, namely, Samuel Sutton, William Andrews, Joseph Tyndale, George Henry Gibbons, and Thomas Wright, applied to his Lordship for leave to withdraw their several pleas of "Not Guilty," and to plead "Guilty" to the whole of the indictment; an application to which his Lordship acceded, and they all pleaded "Guilty" accordingly.

Shortly after the Jury were sworn, another of the defendants, James Patten Anstice, requested permission to consent to a verdict of "Guilty," and a verdict to that effect was recorded against him.

The trial of the indictment then proceeded against the only two remaining defendants on the record, *viz.* John Edward Despard and Charles Elton Prescott, Esq. It occupied the whole of the day, from ten o'clock in the morning until nearly six o'clock in the evening. The Jury did not retire from the Court, but remained in deliberation in their box for about twenty minutes, when they returned a verdict, finding the defendant, John Edward Despard, "guilty," and Charles Elton Prescott, Esq. "not guilty."

Before the next meeting of the Honourable Court, I shall be able to transmit to you the short-hand writer's notes of the whole of the proceedings upon the trial.

I am, Sir,

Your most obedient servant,

(*Signed*) Edward Lawford.

Joseph Dart, Esq.

No. XVIII.

No. XVIII.

AT A

COURT OF DIRECTORS,

Held on Wednesday, the 12th March 1828.

No. XVIII.

Court of Directors, 12Mar.1828.

A letter from the Company's Solicitor, dated this day, transmitting, with reference to his letter of the 7th instant, a copy of the short-hand writer's notes of the trial of the indictment in the Court of King's Bench on the 6th instant, being read;

Ordered, That the said letters, and the notes of the trial therewith transmitted, be referred to the consideration of the Committee of Correspondence.

No. XIX.

No. XIX.

Letter from Company's Solicitor. 12Mar.1828.

Drapers' Hall, 12th March 1828.

Sir:

With reference to the report with which I troubled you on the 7th instant, I have now the honour to transmit herewith a copy of the short-hand writer's notes of the trial of the indictment in the Court of King's Bench on the 6th instant.*

I am, Sir,

Your most obedient servant,

(*Signed*) Edward Lawford.

Joseph Dart, Esq.

* For these Notes *vide* page 81.

No. XX.

No. XX.

AT A

COURT OF DIRECTORS,

Held on Wednesday, the 12th March 1828.

No. XX.

Court of Directors, 12Mar.1828.

A Report from the Secret Select Committee appointed by the Court for the purpose of investigating the transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827, dated this day, being read; adverting to their Report of the 6th June last, in which it was stated, "the "case of another Cadetship, in which some of the same parties are concerned, "has engaged much of the attention of your Committee, who are still investigating the circumstances of that appointment, they are not prepared to "make any Report to the Court upon this case; but they feel that they ought "to state, that there is matter of such strong suspicion attending it, that the "Committee feel it incumbent upon them to pursue that investigation to a "close." Stating that, in pursuance of the foregoing intimation, the Committee feel it to be their duty to call the Court's attention to the circumstances of the case then alluded to, which is that of Mr. Benjamin Bale, who was nominated by Charles Elton Prescott, Esq. to a Madras Infantry Cadetship in February 1827, upon the recommendation of the same Mr. Samuel Sutton who pleaded guilty to the indictment preferred against him (for selling a Cavalry Cadetship) in the Court of King's Bench, on Thursday last, the 6th instant; explaining the reasons for which the Committee do not recommend the institution of any legal proceedings against the parties implicated in the present transaction; and stating, with respect to the young man himself, that it appears evident to the Committee that he paid a sum of money for his appointment, and that it was obtained by means of a representation which was grossly and wilfully false, and that the Committee have therefore no hesitation in recommending that Mr. Bale be forthwith recalled. The Committee, in conclusion, observe, that as they have now brought to a close the investigation into the circumstances

No. XX.

Court of Directors, 12Mar.1828.

cumstances referred to them, and as the reasons have ceased to exist for keeping private the examinations which have been taken from time to time before the Committee, those examinations are submitted together with the present Report.

And the Examinations taken before the Select Committee, and submitted with the Report above-mentioned, having been likewise read;

It was moved,

"That Mr. Benjamin Bale, who proceeded by the ship Resource as an Infantry Cadet for Madras, on the 13th March 1827, be forthwith recalled."

Whereupon it was,

Ordered, That the said Report and Examinations, and the Motion now submitted, be taken into consideration on Wednesday next, the 19th instant.

The Reports from the Secret Select Committee, dated the 4th and 30th May last, being called for, were read;

It was then, on a motion,

Ordered, That the Secret Select Committee appointed for the purpose of investigating the transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827, be discharged from the further consideration of the matter referred to them.

No. XXI.

AT A

COURT OF DIRECTORS,

Held on Wednesday, the 19th March 1828.

No. XXI.

Court of Directors, 19Mar.1828.

The Court proceeding to take into consideration a Report from the Secret Select Committee appointed by the Court for the purpose of investigating the transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827, dated the 12th instant, and ordered to lie for consideration until this day:

The

No. XXI.

Court of Directors. 19 Mar. 1828.

The said Report was read; adverting to the Committee's Report of the 6th June last, in which it was stated, "the case of another cadetship, in which "some of the same parties are concerned, has engaged much of the attention "of your Committee, who are still investigating the circumstances of that "appointment, they are not prepared to make any report to the Court upon "this case; but they feel that they ought to state, that there is matter of such "strong suspicion attending it, that the Committee feel it incumbent upon "them to pursue the investigation to a close." Representing that, in pursuance of the foregoing intimation, the Committee feel it to be their duty to call the Court's attention to the circumstances of the case then alluded to, which is that of Mr. Benjamin Bale, who was nominated by Charles Elton Prescott, Esq. to a Madras Infantry Cadetship in February 1827, upon the recommendation of the same Mr. Samuel Sutton who pleaded guilty to the indictment preferred against him (for selling a Cavalry Cadetship) in the Court of King's Bench, on Thursday last, the 6th instant:—explaining the reasons for which the Committee do not recommend the institution of any legal proceedings against the parties implicated in the present transaction; and stating, with respect to the young man himself, that it appears evident to the Committee that he paid a sum of money for his appointment, and that it was obtained by means of a representation which was grossly and wilfully false, and that the Committee have therefore no hesitation in recommending that Mr. Bale be forthwith recalled. The Committee in conclusion observe, that as they have brought to a close the investigation into the circumstances referred to them, and as the reasons have ceased to exist for keeping private the examinations which have been taken from time to time before the Committee, those examinations are submitted with the present Report.

And the Motion which was submitted on the 12th instant for the recall of Mr. Benjamin Bale, being likewise read;

It was,

Resolved by the Ballot unanimously, That Mr. Benjamin Bale, who proceeded by the ship Resource as an Infantry Cadet for Madras, on the 13th March 1827, be forthwith recalled.

The Report from the Secret Select Committee was then, on the question, approved.

No. XXII.

No. XXII.

AT A

SECRET SELECT COMMITTEE,

APPOINTED BY THE COURT

For the purpose of investigating the Transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827,

Held on Wednesday, the 12th March 1828.

No. XXII.

Report of Secret Select Committee. 12Mar.1828.

Your Committee, in their fourth Report to the Court, under date the 6th June last,* stated " that the case of another Cadetship, in which some of the " same parties are concerned," (and to which the opinion of Mr. Serjeant Bosanquet, alluded to in the Report of your Committee of the 16th ultimo, adverts) " has engaged much of the attention of your Committee, who are still investi- " gating the circumstances of that appointment. They are not prepared to " make any Report to the Court upon this case; but they feel that they ought " to state, that there is matter of such strong suspicion attending it, that the " Committee feel it incumbent upon them to pursue that investigation to a " close."

In pursuance of the foregoing intimation, your Committee now feel it to be their duty to call the Court's attention to the circumstances of the case to which they then alluded. It is that of Mr. Benjamin Bale, who was nominated by C. E. Prescott, Esq. to a Madras Infantry Cadetship, in February 1827, upon the recommendation of the same Mr. Samuel Sutton, who pleaded guilty to the indictment preferred against him (for selling a Cavalry Cadetship) in the Court of King's Bench, on Thursday last, the 6th instant.

On the 23d February 1827, Mr. Prescott signed the nomination of Mr. Benjamin Bale, as a Cadet for the Madras Infantry, by which he declares that he has " inquired into the character, connexions, and qualifications of Mr. Ben- " jamin Bale, and that in his (Mr. Prescott's) opinion, he is a fit person to " petition

* *Vide* page 25.

No. XXII.

Report of Secret Select Committee, 12Mar.1828.

" petition the East-India Company for the appointment he thereby solicits." The recommendation is stated to be by S. Sutton, Esq., and the recommendatory letter addressed to the Court of Directors is signed by Mr. Samuel Sutton, in which he declares, " upon his honour, that he received the nomi- " nation of a Cadet for the Madras Infantry from Charles Elton Prescott, " Esq. gratuitously, and that he had given it gratuitously to Mr. Benjamin " Bale, with whose family and connexions he states himself to be well ac- " quainted."

It is perfectly clear, however, that Mr. Sutton was not acquainted with Mr. Benjamin Bale or his friends; for, on Mr. Sutton's examination before your Committee on the 4th May last (now submitted to the Court), when he was asked by the Committee whether he had had before any patronage from Mr. Prescott, he replied, " that he had had a common Cadetship only. That he did not recol- " lect when, but that it was after the then last Christmas. That he gave it to a " man of the name of Godwin, and that he did not recollect the name of the " Cadet. That he (Mr. Sutton) did not ask to whom it was given, but that " he gave it to a man whom he had known."

Upon your Committee inquiring whether the name of the Cadet was Bale, Mr. Sutton replied, " that he did not know Bale or his friends, his family or " connexions. That he had known Mr. Godwin very many years, but that he " did not know his Christian name: that it might be John or James, and that " he lived somewhere at Brixton."

Upon the examination of the papers relative to the appointment of Cadet Bale (who sailed by the Resource on the 13th March 1827), it is manifest that the answers which should have been written by the Cadet himself are in the hand-writing of Gibbons, one of the parties who pleaded guilty to the late indictment; with the exception of the answer to the fourth question, containing the name of the Director, which name is " Charles Elton Prescott, Esq.; and the answer, " S. Sutton," are in a different hand-writing, supposed to be that of the Cadet.

It appears that the Guardian's Certificate is dated the 16th February 1827, and is signed by one " James Chamberlin," who describes himself as " guar- " dian to the Cadet, Barnstaple, Devon."

Your Committee have seen and examined Mr. Chamberlin, from whose tes-

timony

No. XXII.

Report of Secret Select Committee, 12 Mar. 1828.

timony it appears that, although he was not, in point of law, the guardian of Bale, who had shortly before attained his age of twenty-one years, he had been requested by Bale so to describe himself; and that he had, in the month of February 1827, met Bale and Gibbons in company together in London.

Your Committee have further ascertained, that on the 1st February 1827, this same Bale drew from his bankers in London a sum of £800; £700 of which consisted of two bank of England notes, the one for £500, and the other for £200. These two notes were paid into the Bank of England on Saturday the 24th February 1827. They had been previously cut in halves, and have no name on them but that of "G. H. Gibbons," evidently in his own hand-writing.

The note for £500 appears to have been exchanged for twelve smaller notes, *viz*. four of £100 each, four of £20 each, and four of £5 each.

Among the notes which were given by the Bank in exchange for the £500 note, it appears that there were four of £100 each, three of which notes were paid on that same Saturday, by Mr. Samuel Sutton, to a stock-broker, through whom they passed on that same day into the hands of the stock-broker's bankers, having, as it appears, been cut in halves and joined together again.

The other of the four notes for £100 has the name upon it of "T. Godwin." On one of the notes for £20 (which also appears to have been cut in half) is written the name of "S. Sutton." On another for the same amount, which had also been cut in half, is written the name of "Goodwin;" and on one of those for £5, which had also been cut in half, is written the name of "Godwin."

The inquiries which your Committee have caused to be made after Mr. Godwin have been attended with no other success, than that of satisfying your Committee that he has absented himself on account of pecuniary difficulties in which he was involved, and that there is little prospect of his being met with.

It does not, however, appear to your Committee, that any legal evidence exists, except that of his accomplices, Mr. Sutton and Mr. Gibbons (Mr. Bale, the Cadet, being in India), by which, if he were forthcoming, he could be proved guilty of a corrupt negociation.

Against Mr. Sutton and Mr. Gibbons the moral evidence of guilt in this transaction

No. XXII.

Report of Secret Select Committee, 12 Mar. 1828.

transaction is very strong; but as they are already convicted under the indictment recently preferred, and as legal evidence which might be adduced against them is not direct, although it leads to the strongest moral conviction of their guilt, your Committee do not recommend any legal proceedings against them in reference to this transaction.

With respect to the young man himself who has thus obtained his appointment, it appears to your Committee so evident that he paid a sum of money for it, and that it was manifestly obtained by means of a representation to the Court of Directors which was grossly and wilfully false, your Committee have no hesitation in recommending that Mr. Bale be forthwith recalled.

Your Committee have now discharged the painful duty imposed upon them by the Court. They have brought to a close the investigation into the circumstances referred to them; and as the reasons have ceased to exist for keeping private the examinations which have been taken from time to time before your Committee, those examinations are submitted, together with this Report, to the consideration of the Court.

(*Signed*) H. LINDSAY,
J. PATTISON,
GEO. SMITH,
J. G. RAVENSHAW,
J. BAILLIE.

No. XXIII.

No. XXIII.

AT A

SECRET SELECT COMMITTEE,

APPOINTED BY THE COURT

For the purpose of investigating the Transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827,

No. XXIII.

Examinations before Secret Select Committee.

Held on Wednesday the 2d May 1827,

The Chairman stated briefly to the Committee the purpose for which they had met, and proposed, in order to put the Committee in possession of the circumstances which gave rise to the present investigation, that a Report made to the late Chairman, in February last, should be read.

The said Report was accordingly read.

The Company's Solicitor then stated the outline of the measures which had taken place to the present day: by which it appeared that the sum of nine hundred guineas had been required to be paid by certain parties for the appointment of a Cavalry Cadetship to be conferred on Mr. Edward Drake Back, and that half of two Bank of England notes, one of £500 and the other of £300, had been lodged with certain parties in furtherance of the object; and the papers procured from the Cadet Office, shewing that a Madras Cavalry Cadetship given by Colonel Toone to Charles E. Prescott, Esq., and by the latter gentleman to Mr. E. D. Back, being laid before the Committee by the Chairman,

It was,

Resolved, That Colonel Toone be requested to attend the Committee.

COLONEL

No. XXIII.

Examinations before Secret Select Committee.

Col. Toone.

COLONEL TOONE attending the Committee.

Question.

" An appointment, the papers respecting which are now handed to you, having taken place, and it appearing that your name is affixed to the papers, the Committee are ready to hear any observations which you may wish to make thereon, if you see fit to make any, remembering that the subject is one which will probably undergo investigation in a court of justice, and that any statement made by you may be hereafter brought forward."

Answer.

" A few days ago I received a note from Mr. Prescott, the Director, requesting that I would accommodate him with a Cavalry Cadetship, and that he would give me one in return, the first he might have. Prior to this I knew nothing about the circumstance of Ensign Frederick having returned from India, as mentioned in the Committee of Correspondence last Friday. I considered that I was obliging Mr. Prescott in an honourable way.—When the subject of Mr. Frederick had been mentioned in the Committee, I immediately wrote a note to Mr. Abington, of the Cadet Office, desiring that the young gentleman for whom I had lent Mr. Prescott the appointment should not pass till I had seen him.

(*Colonel Toone peruses the paper from the Cadet Office, to which his signature was attached.*)

" The nomination was a Madras Cavalry Cadetship that Mr. Morris owed me. I did make an inquiry of Mr. Prescott, in consequence of what had passed in the Committee of Correspondence.—Mr. Prescott told me, the young man was a gentleman, the son of a most respectable

No. XXIII.

Examinations before Secret Select Committee.

Col. Toone.

Question.	*Answer.*
	" spectable clergyman in Devonshire, " and that I might depend, upon his " honour, that all was right: that he " knew the gentleman was as fine a " young man as any in England, and " that he knew his father. I knew " no one but Mr. Prescott.
	(*Colonel Toone peruses the written answers in the paper.*)
	" Immediately that I heard some- " thing might occur as to Frederick, " I determined to see the young man, " and to write into the city to order " that he should not pass till I had " seen him. This is all I have to " say. I particularly wrote he was " not to pass without my seeing him. " I not only wrote, but went to the " Office, and desired that the appoint- " ment should not take place without " my seeing him, and I desired Mr. " Abington to speak to his Assis- " tants."

It was then stated, by the Chairman, that he had arrested the papers in their progress, to prevent the youth being sworn.

" What made you apprehend any " thing unpleasant in the transac- " tion?"	" Mr. Frederick's business; in con- " sequence of which story I asked " the Chairs whether they saw any " objection to my lending the ap- " pointment."

Colonel Toone then withdrew.

It was then

Resolved, That C. E. Prescott, Esq. be requested to attend the Committee.

Mr.

No. XXIII.

Examinations before Secret Select Committee.

Mr. Prescott.

Mr. PRESCOTT attending,

Question.	*Answer.*
"An appointment, the papers respecting which are now handed to you, having taken place, and it appearing that your name is affixed to the papers, the Committee are ready to hear any observations which you may wish to make thereon, if you see fit to make any, remembering that the subject is one which will probably undergo investigation in a court of justice, and that any statement made by you may be hereafter brought forward?"	"This is an appointment I borrowed of Colonel Toone, to give to a very particular friend of mine, Mr. Sutton, whom Mr. Pattison, the Deputy Chairman, knows. I know nothing of the parties whatever; and I give you, Sir, my honour, that I have never received one farthing for any patronage that I have given since I have been in the India-House.—I am ready to take a solemn oath.—I declare to God, that I have never taken one shilling for any nomination, either directly or indirectly."
The Deputy Chairman.—"In what degree do you suppose me to be intimate with Mr. Sutton?"	"You know he canvassed for me, and I have been asked to give him the Cadetship.—I can say nothing further. I can only add, that I am as free from selling any patronage as any gentleman here."

Mr. Prescott withdrew, at the request of the Committee, who discussed the propriety of putting to that gentleman some further questions.

Mr. Haldane.

Mr. HALDANE, one of the Assistants to Mr. Abington in the Cadet-Office, was called in, and was informed by the Chairman that he was to consider what passed in the Committee as secret, and was cautioned not to divulge the same.

Question.	*Answer.*
"Are you acquainted with the paper signed by Captain Prescott?"	"I have seen the paper before.
"State when these papers were given to Captain Prescott."	"By Mr. Sharp, to Captain Prescott, on Saturday, the 28th April.

"I know

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Examinations before Secret Select Committee.

Mr. Haldane.

Question. | *Answer.*

"I know this from Mr. Sharp.—To-"day is the first day I have seen the "papers since they were brought by a "young gentleman whom I had never "seen before.—Mr. Sharp filled in "the papers.—The answer to the "fourth query was left blank when "taken away: it was not filled up on "Saturday, when I parted with it. "—Mr. Sharp had it."

Mr. Haldane was desired to withdraw.

Mr. Sharp.

Mr. SHARP, of the Cadet-Office, was called in, and cautioned by the Chairman in the same manner as Mr. Haldane.

Question.

"Look at the papers, and state in "whose hand-writing they are filled "up?"

Answer.

"They are filled up in my hand-"writing.—Captain Prescott desired "me, after Colonel Toone had signed "them, to send them to his house.—"The papers were with Captain Pres-"cott from Saturday till this morning. "I did not see them till this morning. "—Captain Prescott signed the first "part in my presence.—The answer "to the fourth question was filled up "in pencil, by desire of Captain Pres-"cott, in order that the party might see "in what way it should be filled up.

"I did not see it filled up. Captain "Prescott ordered me to send it to "Colonel Toone, and then to his "house.—I did not see the Cadet fill "up the other part.—It is not usual "to allow papers, after they are par-tially

No. XXIII.

Examinations before Secret Select Committee.

Mr. Sharp.

Question. | *Answer.*

"tially filled up, to be taken away, "unless by Directors.—Mr. Back, the "Cadet, came to the Office this "morning: two gentlemen came with "him. I do not know either. I never "saw them before, but should know "them again.—One was in the office "ten minutes ago with the Cadet, and "is to be here at eleven to-morrow."

Mr. Sharp was ordered to detain the party, as the Committee would see him to-morrow.

Mr. Sharp was ordered to withdraw.

Mr. PRESCOTT again attending:

Mr. Prescott.

Question.

"The Committee draw your attention to your having signed the certificate that you are well acquainted with the family and connexions of Mr. Edward Drake Back. They are ready to hear any remark which you may see fit to make on that assertion, adverting to your statement already made to the Committee, that you know nothing of the parties whatever."

Answer.

"It is very true that I have signed the paper, as many others; but I have not known the connexions of half the Cadets I have sent out.—It is certainly wrong, but I have signed many in the same way. It is true, I ought not to have signed it.—I never saw the father nor the young man till to-day; and I was surprised to see the latter so small, as Mr. Sutton had told me he was a fine young man."

Question.

"The Committee learn that these papers were withdrawn from this House from Saturday last till this morning. The Committee are ready to hear any remark that you may wish to make on that fact."

Answer.

"I really do not know any thing about that matter.—I really am at a loss how to answer it. I have no remark to make."

Question.

"The Committee observe that the fourth reply is written in a different "hand-

Answer.

"I never saw the fourth reply till I came into this room this moment."

G

No. XXIII.

Examinations before Secret Select Committee.

Mr. Prescott.

Question.	*Answer.*
"handwriting from the rest. The "Committee are ready to hear any "remark which you may wish to "make on that fact."	
"Were the papers in your posses- "sion from the Saturday till this morn- "ing, and when did you take them "away?"	"Mr. Sutton asked me to get him "the papers. I believe I did take "them away: I am almost certain it "was I. They never were out of my "room till I took them, and I gave "them to Mr. Sutton half an hour "afterwards, who lives at No. 7, Jer- "myn Street; his christian name is "Samuel."
"Who brought the papers here this morning?"	"I really do not know; nor do I "know who wrote the reply to the "fourth quesion."
"In what state were the fourth "question and answer on Saturday?"	"This was a borrowed appointment "from Colonel Toone. I must ex- "plain, that I really did not know "how to fill it up as a borrowed ap- "pointment. Mr. Sharp, of the Ca- "det office, filled it up in pencil.—I "never saw the present answer be- "fore."
"Who brought Mr. Back to you "this morning?"	"I heard he was in the house. I "had never seen him before; and was "surprised, as I have already observ- "ed, that he was so small a man, "as I had been told he was a fine "young man.—"I know nothing as "to who brought him."
"For what purpose did you give "Mr. Samuel Sutton the papers?"	"He said he wanted to send them "down to get them signed in the first "instance."

No. XXIII.

Examinations before Select Committee.

Mr. Prescott.

Question.	*Answer.*
"But you gave them on the Saturday?"	"It was to fill the questions up. I "said to him 'now you are not going "'to dispose of this.'—'No,' he "replied, 'but that he was going to "'give it to a particular friend.'"

Mr. Prescott was requested to withdraw.

Mr. Prescott again attending.

"Are you acquainted with a Mr. Wright?"	"No, I do not know any Mr. "Wright to speak to; excepting Mr. "Wright, who was in this house.— "I have known Mr. Sutton ten or "twelve years: he was in my com-"mittee when I was a candidate.—I "recollect as to a Mr. Wright, who "was a brother Director in the Irish "Provincial Bank with me.—I have "no wish to reserve any information. "I have traced two or three reports, "that my son has offered to sell Wri-"terships and Cadetships, and thus "my name is blasted."
"Do you know a Mr. William Andrews?"	"There is a Mr. Andrews. I do "not know whether his name is Wil-"liam: he was solicitor to the Pal-"ladium."
"With your knowledge of your "son having offered Writerships and "Cadetships for sale, how could you "trust the papers out of your hands "with Mr. Sutton?"	"It was imprudent, but others "have done the same. I do not be-"lieve there is the least intimacy be-"tween Sutton and my son; nor do "I, for a moment, think my son has "any connexion with this paper."
"Do you know a Captain An-"stice, or Messrs. Anstice and "Stubbs?"	"I never heard of such names be-"fore. I know nothing of them."

No. XXIII.

Examinations before Secret Select Committee.

Mr. Prescott.

Question.	*Answer.*
" Have you ever given a Cadetship " to your son in any way?"	" Never, on my honour. I have " never given him any patronage, or " to any one whom he recommended " to me."
" Did Mr. Sutton ask you for a " Cadetship for any particular per- " son?"	" He stated he wanted a Cavalry " Cadetship very much. I told him I " had not one, but that he should have " one when I got it. I believe him " to be honest and honourable. I " particularly cautioned him against " disposing of it.—I may explain, as " to the irregularity of the paper " which I have signed. Mr. Abing- " ton was not at the office, and either " Mr. Haldane or Mr. Sharpe came: " I think the latter. When Mr. Abing- " ton saw it he said it was wrong, " and that the nomination ought to " have been transferred to me, and " given to the young man by me and " not by Colonel Toone."

Mr. Prescott was informed that the Committee particularly requested all which had passed should be kept entirely secret, and then withdrew.

The Committee adjourned till to-morrow, Thursday, the 3d May 1827, at eleven o'clock.

No. XXIV.

No. XXIV.

AT A

SECRET SELECT COMMITTEE,

APPOINTED BY THE COURT

For the purpose of investigating the Transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827,

Held on Thursday the 3d May 1827.

No. XXIV. — Examinations before Secret Select Committee. — *Mr. Prescott.*

C. E. PRESCOTT, Esq. attending the Committee.

Question.	*Answer.*
" Pray is Mr. Sutton in attendance?"	" I wrote to Mr. Sutton to come. " I wrote to him. The Chairman said " I might call. I do not know whe- " ther he is here.—All I wrote was " this: ' My Dear Sutton, you are " ' particularly wanted at the India- " ' House to-morrow morning.' I left " the letter for him at his house my- " self."

Mr. Prescott withdrew.

The messenger was ordered to make inquiry whether Mr. Sutton was in the house; and being returned, stated that Mr. Sutton is well known, and that no one had seen him in the house to-day.

The Committee were of opinion that Mr. Prescott's examination should be read over in his presence.

Mr. Prescott was accordingly requested again to attend; when he was informed of the Committee's opinion, and his examination which took place yesterday was read over to him accordingly.

Mr. Prescott thereupon declared, that he wished no alteration to be made in it as taken down.

" Adverting

No. XXIV.

Examinations before Secret Select Committee.

Mr. Prescott.

Question.	*Answer.*
"Adverting to the caution given by "you to Mr. Sutton, that he should not "dispose of the appointment, had you "any reason for giving such caution?"	"I cannot say that I ever heard he "had sold it. I know he asked the "Deputy for a Cadetship."

Whereupon the Deputy Chairman observed that he was not on such terms with Mr. Sutton as to have authorized him to ask him such a favour, and that all he knew of him was meeting him at Mr. Prescott's house.

"Did you ever give Mr. Sutton a "former appointment?"	"Yes, I gave him one for a widow "lady named Pogson."
"What was the name of the Cadet?"	"I really forget."
"Do you not recollect who asked "for the appointment?"	"It was a lady, I think, through a "Colonel Wilson. I gave it to Mrs. "Pogson, and on that occasion I sup-"pose she signed it."
"Have you given any other ap-"pointment to Mr. Sutton?"	"Yes, a Cadetship. I do not recol-"lect for whom it was. I never gave "him more than that."
"To the best of your recollection, "was the paper for that appointment "given by you to Mr. Sutton?"	"I really do not recollect; if I did, "I would tell you."
"Do you recollect this paper? "(*shewing a cadet paper of February* "*last, in the name of Bale*), and does "it appear to you that the writing of "the answer to the fourth question * "is in the Cadet's hand-writing?"	"Certainly it does not look like it. "It looks like Mr. Sutton's writing. "(*After considering it attentively*). No, "it is not; but a note appended to "the paper is certainly his writing." †

* "Insert name of Director, "and against the answer write "the name of the Person who "recommended you to the "Director. — "*Question* 4. Who recommended you to *Chas. E. Prescott, Esq.* the nominating Director, for this appointment?

"*Answer.* *S. Sutton, Esq.*

† "Sir: The bearer, Mr. Bale, waits upon you to have his appointment filled up and executed, "of which you are apprized. I am Sir, your obedient Servant,

"Saturday Morning. (Signed) "SAMUEL SUTTON."

"— ABINGTON, Esq., Cadet Office,

"East-I. House."

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Examinations before Secret Select Committee.

Mr. Prescott.

Question.	*Answer.*
"Was that paper ever in possession of Mr. Sutton?"	"I do not recollect."
"Were you in London on the 16th February last?"	"I think I was in Brussels. I came over for a short time about that period, and then went back. That appointment is the first I ever gave to Mr. Sutton, excepting that I gave to Mrs. Pogson."
"Will you be so good to bring to your recollection whether you were here, or where you were on the 16th and 26th February?"	"Upon my life, I cannot exactly say. I was over to England from Brussels and back again. I really cannot give an off-hand answer."
Mr. Prescott was informed that it was of the utmost importance that he should endeavour to bring Mr. Sutton to the house.	"As I'm alive, I thought he would have been here."
"It is most essential he should be here."	"Then I must have leave of the Committee to go after him."
The *Deputy Chairman,* addressing himself to Mr. Prescott, stated, that it was of the utmost moment, as connected with this abominable transaction, that Mr. Sutton should be produced; "and until you produce him (I speak to you as a friend) you will not stand free. Money has been paid, and it is your matter to shew that you are no participator in the business."	"I may not be able to find him."
"When did Mr. Sutton first apply for this appointment?"	"I do not recollect."
"Did he ever mention the name of the party for whom he applied?"	"I really do not recollect."
"How long is it since he signified a wish to have another Cadetship?"	"About three weeks, or just before the last election; since I returned from Brussels; and I returned Friday

No. XXIV.

Examinations before Secret Select Committee.

Mr. Prescott.

Question.	*Answer.*
	"day before the election, which was "on the 11th of April. I think he "applied the beginning of the fol-"lowing week."
"When was the name of the party "for whom it was intended first com-"municated?"	"He might have stated it at that "time, but I really forget."
"When was the name of Back first "mentioned?"	"When Mr. Sutton first asked me "for it. He then said it was for a "clergyman's son, and a very fine "young man: that was his expres-"sion. No other person ever com-"municated with me, and I never "endeavoured to see the Cadet till "the morning he was to be sworn "in."
"Who informed you that Cadet "Back was in the house?"	"I went to Mr. Sutton, to know "whether the young man had come "to pass. Till then I had not seen "him. It is true, I signed the paper "stating that I had seen him and "knew him, but it was wrong.
"Do you recollect communicating "with Colonel Toone as to the young "man, and that you told Colonel "Toone that the young man was the "son of a most respectable clergy-"man in Devonshire, and as fine a "young man as any in England?"	"Colonel Toone must certainly "have made a mistake, though I "should be sorry to contradict the "Colonel if he says so; but I really "do not recollect that I said I knew "the party. I mentioned as much to "the Colonel yesterday.—My signing "the paper was a mistake. Mr. Ab-"ington when he saw it said it was "wrong."
"You told Mr. Sharp to fill up the "answer to the fourth question in "pencil?"	"Yes, I think I did."

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Examinations before Secret Select Committee.

Mr. Prescott.

Question.	*Answer.*
"You stated, that you took away the papers on Saturday?"	"I do not exactly recollect. It might be Friday or Saturday. I gave them that very day to Mr. Sutton."
"When did Colonel Toone sign them?"	"On the day I took them. It might be Friday or Saturday."
"There was a Committee of Correspondence on Friday."	"It is true I did not see him on that day: it must have been Saturday."
"Were the papers signed when you took them to give to Mr. Sutton?"	"They must have been, I presume: of course they were."
"The papers, then, remained, to the best of your knowledge, with Mr. Sutton till the Wednesday following?"	"Certainly. I never saw any more of them."
"Had you any suspicion that Mr. Sutton would act improperly, from your using the expression and caution, 'do not dispose of the appointment?'"	"I had not any suspicion. I really cannot say how I came to express myself so. It must have been, as is often done, without thinking."
"You have already stated about the period when Mr. Sutton applied to you for the appointment. Cannot you call to memory the day?"	"I arrived on the Friday; and I think early in the following week, or about the middle. That was the first time, I will take my oath."
"Did he apply by letter?"	"No, personally."
"For what purpose could Mr. Sutton want the papers, when you have stated that they were complete, excepting the answer to the fourth question?"	"I do not know, upon my life."
"The answer to the fourth question appears only to have been unfilled?"	"There was more pencilled than the answer to that question. (*Mr. Prescott having looked at the paper*) I really cannot say which they were."

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Examinations before Secret Select Committee.

Mr. Prescott.

The Committee pointed out to Mr. Prescott, that it was of the last importance to him to endeavour to bring Mr. Sutton before the Committee, and that he ought not to give up the pursuit till he found him; adding, " if you " do not, nothing short of disgrace and destruction must await you."

Mr. Prescott expressed his determination to seek him, and then withdrew.

The various details connected with the progress of the measures adopted, under the direction of the Chairs, from time to time, for the discovery of guilty parties, were then communicated to the Committee by the Company's Solicitor.

The Committee being informed, that a person of the name of Gibbons had been in the Cadet-office, regarding the appointment of Mr. Back,

On inquiry it appeared that he had left the house immediately afterwards.

The Company's Solicitor then stated the result of the interview which he had with Dr. Back yesterday evening: by which it appeared that the remaining half of the £300 Bank of England note had been that day paid by Dr. Back, in a coffee-house opposite the India-House, to Mr. Sutton and a person who was with him.

Mr. Abington.

Mr. ABINGTON attending the Committee.

Question.	*Answer.*
" State what took place last Wednesday, as to the papers regarding " Mr. Back's appointment."	" Early on Wednesday morning last " Colonel Toone called on me in the " Cadet Office, to know if Captain " Prescott's young man had been " there, and desired that he might not " pass till he saw him. I gave those " directions accordingly. The young " man did not come till some time " after. I then found that the Com- " mittee of Correspondence was se- " cret, and that Mr. Haldane had " quitted the house and got the papers " with him. Captain Prescott having " inquired two or three times whether " the papers were ready, I sent Mr. " Sharp

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Examinations before Secret Select Committee.

Mr. Abington.

Question.	*Answer.*
	" Sharp to inquire for Mr. Haldane; " and not finding him, I wrote a note " to the Assistant Secretary to know " about the papers."

Mr. Abington, by desire of the Committee, went for the purpose of bringing some notes addressed to him by Colonel Toone, as to the appointment not passing till he had seen the party.

The letters, four in number, were produced and read; the purport of which was, to defer passing the young man till he (Colonel Toone) had seen him.

	" Colonel Toone came to my office " very soon after the arrival of the " letters, and desired that the young " man should not pass till he had seen " him. I then took the opportunity " to point out to Colonel Toone the " error as to the papers, as the nomi- " nation ought to have been made by " Captain Prescott on the appoint- " ment lent by Colonel Toone to " him.—Colonel Toone said 'certainly " it ought to be so,' and ordered the " matter to be stopped till the correct- " ed papers were brought forward."
" After Colonel Toone had signed " the present papers, the messenger " was desired to take them to Captain " Prescott."	" So I understand."
" Who made out these papers?"	" I don't think Mr. Sharp or Mr. " Haldane.—(*Looks at the answers " written in.*) Had I seen the answer " to the fourth question, as it is, with " any cadet, I should not have passed " him.—(*Looks again at the first " part to which Captain Prescott's sig- " nature is affixed.*) It is something " like Mr. Sharp's writing, but it is a bolder

No. XXIV.

Examinations before Secret Select Committee.

Mr. Abington.

Question.	*Answer.*
	" bolder hand than his.—(*Looks at a* " *nomination given to Mr. Sutton in* " *February last.*)
" Who filled up that?"	" I did. The answer to the fourth " question is certainly not in the same " hand-writing.—I gave the paper to " Captain Prescott myself.—The re- " plies were all empty. I then ex- " plained how they were to be signed " and filled up, &c. &c."
" How came it to pass? as you say, " such a paper, so filled up, you would " not have passed?"	" I do not exactly recollect whether " I was away from illness. If not, it " must have been taken before the " Committee or two Members, whilst " I was engaged in other business. " I certainly should have said, had I " seen it, that it was irregular."
" Is it usual for Directors to make " a practice of taking out the papers, " after the questions are partially filled " up, to complete the others?"	" Certainly not. Nine times out of " ten, they are all filled up in my " office."
" Do you fill up in pencil any of the " answers?"	" Never."
" Do you believe another instance " can be found in the Cadet-office of " a borrowed Cadetship being filled up " in this way?	" No, I do not.—Certainly I do not " recollect one. I may state, that I un- " derstood Colonel Toone wished to " sign the appointment, although a loan; " consequently this gentleman being " recommended by Captain Prescott, " he was the only one to stand between " Colonel Toone and the Cadet. I " stated it ought to be otherwise, and " then Colonel Toone acquiesced, and " the papers were preparing when this " investigation

No. XXIV.

Examinations before Secret Select Committee.

Mr. Abington.

Question.	*Answer.*
	" investigation put an end to the matter.—I presume that the mode was suggested by Mr. Sharp to Captain Prescott."
" Has Captain Prescott any Cadetship for the Cavalry standing in his name at present?"	" He has only one Bombay Cavalry of the season 1826, and which is promised to a Mr. Campbell."
" When Mr. Prescott borrowed an Infantry Cadetship of Mr. Alexander last February, had he none in his own gift?"	" No. On the 7th February Mr. Prescott appointed a Mr. Frederick, and the last Madras Cavalry was passed in January 1827."
	" I had been informed by Mr. Sharp, that Captain Prescott had desired him to fill up the paper for Colonel Toone to sign, and then it was to be sent to his own house.—Mr. Gibbons, Dr. Back, and his son, were in the office all yesterday: and Mr. Gibbons was here this morning, when I sent in a note to the Deputy Secretary stating so; but on returning to the office Mr. Gibbons was gone.—Yesterday he asked continually why the matter was not done."

Mr. Abington was ordered to withdraw.

The Company's Solicitor informed the Committee that Dr. Back had stated that Mr. Gibbons had followed him throughout yesterday, and that on his asking why he continued to accompany him, Mr. Gibbons replied, " Oh! the " balance of £145 is still to be paid, out of which £100 goes to Wright, " and £45 for myself."

Mr. Sharp.

Mr. SHARP, of the Cadet Office, was again desired to attend.

Question.	*Answer.*
" The arrangement, as to the present	" No."

No. XXIV.

Examinations before Secret Select Committee.

Mr. Sharp.

Question.	*Answer.*
" papers of Mr. Back's appointment is " not the usual one?"	
" Why did you adopt this course?"	" Captain Prescott received a note " from Colonel Toone, requesting Mr. " Abington to fill up the papers for his " signature; and I followed this course " because I thought I was fulfilling " Colonel Toone's wish. I had no " motive but to save trouble, and meet " the desire of Colonel Toone."
" What would you have done in the " common course of things?"	" I should have got Captain Pres- " cott to sign the papers in the usual " way."
" What took place as to the answer to the fourth question?"	" Captain Prescott desired me to " fill it up in pencil, to shew that it " was given him by Colonel Toone."
" Can you account why this took " place in filling up the fourth an- " swer?"	" No, Sir; Mr. Abington filled the paper up."
" Do not you understand that it " ought to be in the Cadet's own hand- " writing?"	" Yes; but when it is taken out " of the office we cannot answer."
" Do you know why the name of " Sutton should have been affixed to " the second answer, and in a different " hand?"	" I know nothing of it."

Mr. Sharp confirmed his former statement, as to the transmission of the papers to Colonel Toone on the Saturday, at Captain Prescott's desire; and their subsequent transmission, after being signed by Colonel Toone, to Captain Prescott's house.

He was then ordered to withdraw.

The Committee being informed that Dr. Back was in attendance;

Ordered, That Dr. Back be informed, the Committee do not feel it necessary to detain him in town; but that they request he will hold himself in readiness to obey their summons whenever he may receive it.

The Committee adjourned till to-morrow at eleven.

No. XXV.

AT A

SECRET SELECT COMMITTEE,

APPOINTED BY THE COURT

For the purpose of investigating the Transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827,

Held on Friday, the 4th May 1827.

No. XXV. — Examinations before Secret Select Committee. — *Mr. Sutton.*

Mr. SUTTON attending the Committee.

Question.	*Answer.*
" Is your name Sutton ?	" Samuel Sutton."
" The Committee are informed by " Mr. Prescott, that the nomination of " Mr. Edward Drake Back to a cavalry " cadetship was given on your so- " licitation. They are investigating " the circumstances of this nomina- " tion, and are ready to hear any " thing which you may wish to say " upon it, cautioning you that the " subject may undergo investigation " in a court of justice."	" I have nothing more to state, than " that I received the appointment from " Captain Prescott, and that I have " abused his confidence, because I told " him an untruth. With respect to " answering any question here in your " Committee; as it may be brought " forward in a court of justice, I shall " not, without a legal adviser, answer " any question. I have deceived " Captain Prescott, who has been my " best friend. If I have done wrong, " I have been deceived. I do not come " here to tell a lie."
" Remembering the caution already " given to you, are you willing to an- " swer such questions as the Com- " mittee may put ?	" Perfectly, Sir. If I think myself " justified in so doing, I will answer " them. I am not prepared. I might " commit

No. XXV.

Examinations before Secret Select Committee.

Mr. Sutton.

Question.	*Answer.*
	"commit myself by one word. This "may be a serious sort of an event."
"The Committee are desirous you "should in no way commit yourself."	"I shall be happy, at a higher tri-"bunal, to be called and examined as "you may please.—I had a good in-"tent and a good motive, and shall be "ready to meet a court of justice. "Unfortunately, Captain Prescott has "had too much reliance on me. He "gave me the papers, and said he "relied upon me for being correct, and "wished himself to take them to the "office and get them filled up. Any "thing as to Captain Prescott I will "answer on my oath, but I cannot "meet him."

Mr. Sutton was requested to withdraw, and the Committee discussed the propriety of putting further questions.

Mr. Sutton was again requested to attend.

Question.	*Answer.*
Mr. Sutton being again cautioned not to commit himself, was informed that the Committee were ready to hear any thing further that he might wish to say.	"Truly, Sir." "With respect to the Cadetship, I "said that I wanted it for a most par-"ticular friend of mine, Dr. Back's "son. I did not know Dr. Back or "his son, and that is the way I meant "that I deceived Captain Prescott.—I "gave it to a third person, who was "Colonel Edwards. It came through "a third person, instead of direct to "Dr. Back.—The appointment I gave "to Colonel Edwards myself, and I "saw the young man fill up the paper "myself, at least that part in pencil, and

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Examinations before Secret Select Committee.

Mr. Sutton.

Question.	*Answer.*
	"and the top part in blank, both at "the same time. So far I know to "be perfectly correct: that is all I can "state."
"When did you ask Captain Prescott for the appointment?"	"It is about a fortnight ago: it "may be more or less. The papers "were never out of my possession "till I saw the boy sign them, nor "before that time till I delivered them "over to Colonel Edwards.—It might "be a week before I delivered over "the papers, I cannot exactly say. "When I asked Captain Prescott, "he said he had no hopes of being "enabled to give me a Cavalry Cadet. "I said, 'when you come into the di-"'rection it will be of no earthly use, "'as the boy will be too old,' or "something to that purpose.—When "I gave the certificate to Captain "Prescott, the whole was fully signed "excepting the answer to the fourth "question.—I delivered the papers, "the last time, to Colonel Edwards "on Wednesday morning. — The "petition, when given me, was not "filled up, either in the first part or "in the fourth question and answer.— "I hope all is right. If I had said I "had given it to a third party in-"stead of to Dr. Back, I should have "been as happy as a prince. The "fourth answer I saw written by the "boy himself, and I never saw two

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Examinations before Secret Select Committee.

Mr. Sutton.

Question.	*Answer.*
	"such apparently different hands in "the same paper. I said he was a fine "young man."
"Who was it told you that the "boy was nearly of age?"	"Upon my life, I cannot bring to "my recollection."
"You are here voluntarily: the "Committee will abstain, if you de-"sire not to have questions put."	"I came here unprepared. I "know nothing more than what I "have told you."
"What is your connexion with "Colonel Edwards?"	"He was introduced to me."
"By whom?"	"I did it to oblige a friend. I had "known some little of Colonel Ed-"wards some time. I have told you "the truth, so help me God. I kept "the paper from the time I got it till "I gave it to Colonel Edwards. I "got it from Captain Prescott, and "told him it was for a very particular "friend of mine, and that he was "soon of age. Not for ten thousand "would I have told him a lie."
"Who was the friend whose name "you declined mentioning?"	"At present I am not prepared to "answer. There may be something "wrong somewhere. I recollect how "I obtained it, and how I gave it "out of my hands."
"Did you see Captain Prescott last "night?"	"Yes, about six. He wrote to me. "I should have answered his letter, "but was out at six in the morning "and off to the country. I under-"stood Captain Prescott had been "looking for me, and I faithfully "promised him I would be here this "morning.—Had Captain Prescott

"told

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Examinations before Secret Select Committee.

Mr. Sutton.

Question. — *Answer.*

"told me the nature of the business I "should have been more collected."

"Did you obtain it originally for "the young man?"

"Certainly. The certificate was "given me before the appointment. "When the paper was first given me "it was not filled up: the second "time I got it the certificate at the top "was filled up and the answer to the "fourth question."

"Who made the application to you for the cadetship?"

"I must decline answering. I know "a little of Colonel Edwards. I must, "first of all, know why and wherefore "all this examination takes place.— "I have no objection in any court of "justice, but here I must decline to "answer. I have no objection to state "how I came by the appointment and "how I gave it. I will not tell a lie."

(*By the Deputy Chairman.*)—"As a "friend and well-wisher to yourself "and Mr. Prescott, and desirous of "maintaining that conduct between "man and man which ought to be "observed, I must state that Mr. "Prescott is put into a very unplea-"sant situation. All you can say in "explanation, which may have the "effect of influencing the opinion of "the Committee with regard to that "gentleman, ought to be given."

"If there is any imputation on "Captain Prescott, and I can wipe it "off by any oath, I am ready to de-"clare that he is as free as any person "in the Honourable Court. I went "to see his son in the Bench, and I "told Captain Prescott how his name "had been used as to patronage, and "that the son had mentioned that "Mr. Wright had said, if he would "give him a Writership and a Cadet-"ship it would get him released out "of prison. I said, 'Tom, you have "'before made use of these expres-"'sions; and before your father "'would give it you, he would see

"'you

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Examinations before Secret Select Committee.

Mr. Sutton.

Question.	Answer.
	" 'you hung first.'—I regret to have " brought such a slur upon him. I " deceived him, and I have told the " whole truth, so help me God.—The " paper was filled up, except where " the blanks were left, before I made " application for the appointment; " that is, the first part, and all but " the answer to the fourth question.— " I got the paper filled up. They " had got it already signed. The " gentleman had been looking out for " an appointment for his son."
" Did you receive the papers from " Colonel Edwards?"	" From Colonel Edwards, but not " from his hands."
" From whom?"	" I have no great mystery about it, " but I must consider. I am not pre- " pared. There may be a set against " me. With respect to Captain Pres- " cott, I am prepared to swear before " a Magistrate: I am prepared to an- " swer any question. There may be an " error somewhere."
" Have you had any patronage " from Mr. Prescott before?"	" A common Cadetship only. I " don't recollect when. I gave it to a " man of the name of Godwin. I don't " recollect the name of the cadet. It " was after Christmas last. Upon my " life I did not ask to whom it was " given. I gave it to a man whom I " had known."
" Was the name Bale?"	" I am not acquainted with Bale or " his friends. I have known Mr. God- " win very many years. He was once " acquainted

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Examinations before Secret Select Committee.

Mr. Sutton.

Question.	*Answer.*
	" acquainted with a person by whom " I lost a good deal of money."
" Did you inquire whether there " was any acquaintance between Mr. " Godwin and Mr. Bale?"	" Upon my word, I did not. I do " not remember who signed the paper " to the cadet. I can send my friend. " (*Peruses the printed papers, which* " *certify that he knows the parties.*)— " It is true, but I was not ac- " quainted with the writing of the " young man. I believe I came with " him. (*Looks at questions and an-* " *swers.*) The name of Sutton, at the " Question No. 2, is not my writing. " — Upon my life, as to the Cadet's " writing being in his hand to the " answers, there is in the other papers " a circumstance, as to the fourth " answer, which makes it impossible " for any one to answer as to hand- " writings. I do not know Mr. Godwin's " christian name. He lives somewhere " at Brixton. It may be John or James. " — I don't know the family and " connexions of Mr. Bale. My " friend brought his friend for whom " the appointment was obtained. I " remember that I came with Mr. " Bale; I don't know whether they " were not busy in the office, so I " sent the note."
" Do you know Mr. Godwin's " writing?"	" Yes, I have many notes of his. I " don't know Sutton of Taunton."

Mr. Sutton withdrew.

The Committee adjourned till Friday, the 11th instant, at eleven.

No. XXVI.

AT A

SECRET SELECT COMMITTEE,

APPOINTED BY THE COURT

For the Purpose of investigating the Transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827,

Held on Friday the 11th May 1827.

No. XXVI.

Examinations before Select Secret Commttee.

The Chairman stated, that he had received a letter from Captain Prescott dated the 10th instant, expressing his anxious wish that the most *unreserved scrutiny* be made regarding the mode in which he has disposed of his patronage since he became a Director.

The said letter was read, being as follows, *viz.*

"East-India House, May the 10th 1827.

"My dear Sir;

"As I learn that the Secret Committee meet again to-morrow, I am desi-"rous, through you, to express my anxious wish that the *most unreserved scru-"tiny* be made, in any way the Committee may deem best, regarding the "mode in which I have disposed of the whole of the patronage that has been "allotted to me since I was chosen a Director.

"I have the honour to be,

"My dear Sir,

"Your humble servant,

"To the Hon. H. Lindsay, (*Signed*) "C. E. Prescott."

"Chairman, &c. &c."

Mr. Abington.

Mr. ABINGTON attending the Committee.

Question.	*Answer.*
"Are the Committee in possession "of all the notes sent tothe Cad et-"office by Colonel Toone?"	"I think so; but some were writ-"ten, or indeed most, whilst I was "absent, from indisposition."

Mr. Abington was desired to withdraw.

No. XXVI.

Examinations before Select Secret Committee.

Mr. Haldane.

Mr. HALDANE called in.

Question.	*Answer.*
"The Committee desire to know, "whether, on the Friday afternoon, "the 27th April, you had any written "or verbal communication from Colo-"nel Toone?"	"No written, before I received this "paper."
"What was the first communica-"tion from Colonel Toone to you?"	"I think it was a written docu-"ment sent into the office."
"Had you any personal communi-"cation with Colonel Toone?"	"I saw Colonel Toone three or four "times on the subject, though I really "cannot say when. It was in the "middle of the day, the first personal "communication. (*Looks at the note** "*dated Saturday the 28th.*) This was "not the first written communication. "Previously to my receiving this "Colonel Toone saw me, and said, "'Do not pass the gentleman till I "'see him.' This was on the Satur-"day, about twelve in the day."
"When did the written communi-"cation come in, and was it from "Colonel Toone's house?"	"It came in so suddenly, and so "soon after I saw Colonel Toone, "that I cannot exactly tell."
"Try and recollect which was the "first communication, and when?"	"The verbal one was the first, and "received about twelve; the written "one an hour after, and on the same "day."

Mr. Haldane was desired to withdraw.

Col. Toone.

COLONEL TOONE attended the Committee.

Question.	*Answer.*
Colonel Toone is requested to state the circumstances attending the communication, verbal and written, which	The latter end of the month of last April, about the 26th, I received a note from my friend Captain Prescott, with a request

* For this note, see page 69.

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Examinations before Secret Select Committee.

Col. Toone.

Question.

he made to the Cadet Office, in relation to the nomination of Cadet Back.

Answer.

a request that I would accommodate him with the loan of a Cavalry Cadetship, and, if in my power, it would much oblige him; that he would return it to me, the first which should fall to his lot. I had a Madras Cavalry nomination in my power, and I was most happy to oblige him, and immediately writ a note to Mr. Abington, the gentleman in charge of the Cadet department, to request he would give my Madras Cavalry nomination to Captain Prescott's order. I received the papers from Mr. Abington, filled up with the name of Edward Drake Back, Mr. Prescott's nomination, which in full confidence I signed and returned to him by the messenger who brought Mr. Abington's papers to my house, most anxious not to lose a moment to meet the wishes of Mr. Prescott, and which I did contrary to my general practice of seeing the gentleman so named by my friend, as he informed me the youth had but two months before he arrived at the age of twenty-two years, when he could not be appointed. Captain Prescott had informed me that he was a very fine youth, the son of a respectable clergyman in Devonshire, with whom he was acquainted. Immediately after despatching Mr. Abington's messenger and his papers signed by me, it occurred

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Examinations before Secret Select Committee.

Col. Toone.

Question.	*Answer.*
	curred to me that I had not seen the youth. I therefore instantly writ to Mr. Abington by the penny post, to request that the young gentleman so nominated by me must not be presented to pass for a Cadet until I had seen him, and with that view, I should attend at his office on the Monday morning, and I writ a note and sent it by my servant to Captain Prescott's house in Curzon Street immediately, advising him that I had received the papers from Mr. Abington, signed them, and returned them to his office, but that the youth was not to be presented to pass as a Cadet until I had seen him, and with that view I should attend at Mr. Abington's office on the Monday morning with a positive order that the youth should not pass until I had seen him. I attended and remained in the office until twelve, but I did not see the youth or Captain Prescott, nor receive any reply from Captain Prescott.
"Do the Committee understand, "that after you received the papers they were sent back to Mr. "Abington, and that you desired Mr. "Abington not to pass the Cadet till "you had seen him?"	"Certainly; and I directed the "papers to William Abington, Esq. "I wrote to him or his Deputy not "to pass him."
"Do you know the messenger who "brought the papers on the Saturday?"	"I do not; nor did I, I think, "see him. The papers which I re-"ceived on the Saturday by the mes-

"senger

No. XXVI.

Examinations before Secret Select Committee.

Col. Toone.

Question.	*Answer.*
	"senger were directed by me to "William Abington, Esq., and sealed "up. I was not at all aware that "they were to go to Mr. Prescott, or "that they were taken there. I de-"sired them to be taken to Mr. "Abington. I don't know how that "could occur, it was a very extra-"ordinary circumstance. I will take "my oath I sealed up the papers, "and desired they might be given "to Mr. Abington the same even-"ing. It occurred to me imme-"diately, that I had done wrong in "signing the papers before I had "seen the young man, and I there-"fore sat down directly, and wrote "to Mr. Abington by the twopenny "post, not to pass the Cadet till I "saw him; and I wrote again to the "same effect on Monday, and sent "that note in by my servant."

Mr. Sharp.

Mr. SHARP called in.

Question.	*Answer.*
"By whom were the papers as to "Cadet Back sent to Colonel Toone?"	"By desire of Captain Prescott."
"Who was the messenger?"	"I can ascertain of the commo-"dore."
"What instructions did you give?"	"The papers were enclosed to "Colonel Toone. I desired that the "man who took them to Colonel "Toone should, after receiving them "back from Colonel Toone, take "them

No. XXVI.

Examinations before Secret Select Committee.

Question.	Answer.
	"them to Captain Prescott, and that "by Captain Prescott's particular de- "sire."
"Through whom did you give the "instructions to the messenger?"	"Through the commodore."
"Do you know who was the com- "modore on that day?"	"Yes.—I did not see the papers "again till I got them from Captain "Prescott: there was then no cover "on them."
"Do you say that the papers were "not at the house till on the Monday "or Tuesday?"	"It was between Monday and "Wednesday: but I cannot say to a "certainty."
"Are you sure that they were in "the office between the Saturday and "Wednesday?"	"I think it was on Wednesday that "I first saw them after the Saturday, "and I believe that they were with "Captain Prescott from the Saturday "till the Wednesday."
"In whose hands did you see them "first on the Wednesday?"	"Mr. Haldane's."

Mr. Sharp.

Mr. Sharp was desired to withdraw.

Mr. HALDANE called in.

Mr. Haldane.

Question.	Answer.
"When did you receive the cadet "papers as to Mr. E. D. Back?"	"On the Wednesday. I took them "myself from a tall stout gentleman, "who came with Mr. Back, the ca- "det."
"Did you see the papers between "Saturday and Wednesday?"	"No, not at all; I thought they "were with Captain Prescott during "that time, as Mr. Sharp said he "gave them to Captain Prescott."

Mr. Haldane was desired to withdraw.

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Examinations before Secret Select Committee.

Mr. Abington.

Mr. ABINGTON called in.

Question. — *Answer.*

"Colonel Toone wrote to you a "note when he originally transferred "the Cavalry appointment to Captain Prescott, where is it?" — "I have not been enabled to find "any. I do not recollect one."

"Did you inform Captain Prescott "that he had a Cavalry appointment "in his gift, when he asked about "that from Colonel Toone? — "Captain Prescott looked over his "own patronage, and was aware that "he had a nomination in his own gift. "There was a name against it in "pencil of Campbell."

"How long has Mr. Campbell's "name been against it?" — "Above six months, I do not know "who he is."

Mr. Abington was desired to withdraw.

The Commodore.

The COMMODORE called in.

Question. — *Answer.*

"What is your name?" — "Salter."

"Refer to your book, and inform "the Committee who was the messenger that took a packet to Colonel "Toone on the 28th April?" — "Messenger No. 4."

"What orders did you give him?" — "That he was to carry the packet to "Colonel Toone, and to take the answer he might get at Colonel Toone's "to Captain Prescott's. Mr. Sharp "gave me such orders; it was either "him or his messenger."

The Commodore was desired to withdraw.

The Messenger.

The MESSENGER called in.

Question. — *Answer.*

"What is your name?" — "Sullivan."

"Did you receive the packet on — "Yes, I did, and I was ordered to "take

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Examinations before Secret Select Committee.

The Messenger.

Question.	*Answer.*
" Saturday the 28th April from the " Commodore for Colonel Toone?"	" take the answer to Captain Prescott, " No. 3, Curzon Street: the Commo- " dore told me so."
" How was the letter you received " from the Commodore directed?"	" To Colonel Toone."
" To whom was the answer you " received from Colonel Toone direct- " ed, and was it sealed?"	" It was directed to Mr. Abington, " and sealed."
" To whom did you deliver it in " Curzon Street?"	" To a woman who opened the " door."
" What did you tell her to do with " it, and what did she state?"	" I told her to give it to Captain " Prescott. I got a verbal answer, " which was, 'there was no answer.'— " I was told Captain Prescott was " at dinner."
" Who told you?"	" The woman who took the letter. " She appeared to be the woman of " the house."

The Messenger was desired to withdraw.

The opinion of Mr. Serjeant Bosanquet on the whole of the proceedings was then read; by which it appeared, that, for the reasons therein stated, he submitted an indictment should be preferred before the Grand Jury against the several parties named therein, including Mr. Prescott.

The Chairman then stated, that the Deputy Chairman and himself had fully considered the subject. That it involved matter so vitally affecting the character and conduct of a Member of the Court of Directors, that whilst he entertained the highest possible respect for the opinion of the learned Serjeant, he felt, in a matter of so grave a nature, that it would be a source of consolation to himself, to the Deputy, and to the Committee, in so far as respects the proceeding affecting the Director, to have the opinion of the Law Officers of the Crown, together with that of Mr. Serjeant Bosanquet, before the Committee reported the same to the Court; and added, that such a desire has been expressed to Mr. Serjeant Bosanquet, who stated, that whilst he would

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would not shrink from the performance of what he considered to be the discharge of his public duty, it would be highly satisfactory to him, that the course now pointed out, of consulting his Majesty's Attorney and Solicitor General, should be followed.

The Company's Solicitor received the Committee's instructions accordingly.

Mr. Haldane.

Mr. HALDANE was again called in

Question.	*Answer.*
" What was the first communication " to you from Colonel Toone regard- " ing the loan of the Cadetship to " Captain Prescott?"	" The first communication from " Colonel Toone was by a written " note from him to Captain Prescott, " which was given by Captain Pres- " cott to me in the Cadet-office.— " When Colonel Toone came to the " office to say the Cadet was not to " pass, he mentioned that he had " written a private note to Captain " Prescott, stating he had given him " the Cadetship, and this note Colonel " Toone then took, since which I have " not seen it."

Mr. Haldane was desired to withdraw.

The Committee adjourned till Wednesday next, the 16th instant, at 10 o'clock in the morning, on which day the Committee made their second report to the Court. (Vide p. 10.)

No. XXVII.

AT A

SECRET SELECT COMMITTEE,

APPOINTED BY THE COURT

For the purpose of investigating the Transactions alluded to in a Minute of a Secret Committee of Correspondence of the 2d May 1827,

Held on Thursday, the 14th June 1827.

No. XXVII. — Secret Select Committee, 14June1827. — *The Company's Solicitor.*

The Chairman called the Committee's attention to the case of Cadet Bale, who was appointed in February last, on the nomination of C. E. Prescott, Esq., at the recommendation of Mr. Samuel Sutton. Whereupon

The Solicitor detailed to the Committee the suspicious circumstances which had occurred regarding that appointment, and drew the Committee's particular attention to the fact of Mr. Sutton having signed the recommendation, declaring that he knew the party and his connexions, whereas, in his examination before the Committee on the 4th May, it appeared that he was entirely unacquainted with the Cadet or his friends; that he stated that he had given it to a Mr. Godwin, who he believed lived at Brixton, but that it appeared on inquiry no such person was to be found there, but that a Mr. Thomas Godwin, a stock-broker, in embarrassed circumstances, who lived at Vauxhall, was the party; but that, in the present state of his affairs, there was little probability of his attending the Committee to afford any information.

The Solicitor then adverted to the great similarity in the hand-writing in which the answers to some of the questions were filled in, to that of Mr. Gibbons, one of the parties concerned in the matter now under prosecution; and then drew the particular attention of the Committee to the Certificate of Baptism, which was in part filled in by the same hand as that of Gibbons, and which

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Examinations before Select Secret Committee.

The Company's Solicitor.

which was signed by "George Chamberlin," as guardian of Bale, whereas, in point of fact, Bale was more than twenty-one years of age when nominated, and Chamberlin never had been his guardian.

The Solicitor then entered into a detail of the means which had been employed to gain a knowledge of the connexions of Bale in Devonshire, and of the result, which led him to trace certain pecuniary transactions of the Cadet Bale when in town, from which it appeared that he had kept cash at the banking-house of Messrs. Remington and Co. That on the 1st February 1827, Bale drew out, by his own cheque, the sum of £800, in

1 Note of...	£50
1 ... do.......	200
1 ... do.......	500
and the......	50 in cash.

The dates and numbers were all ascertained.

That the date of Bale's nomination as a Cadet by Captain Prescott was on the 23d February, which was Friday. That on the 24th, Saturday, the notes for £500 and £200, which were paid by Messrs. Remington to Bale on the 1st of that month, and which had not been negociated till the 24th, were on that day paid into the Bank by Mr. Gibbons, both notes having previously been cut in half. That *Gibbons* received cash for the £200, and twelve notes for the £500, of which four, of £100 each, had been traced, and on one of them the name of "*T. Godwin*" was written. On the three others nothing had been written, but each had been cut in half. On the same day, the 24th February, that they came out of the Bank, they were paid into the banking-house of Messrs. Williams and Co., Birchin Lane, to the account of Mr. F. Freshfield, a stock-broker. In consequence of which Mr. Lawford addressed a note to Mr. Freshfield, to learn the particulars of the party from whom he had received them; and that Mr. Freshfield, in reply, stated that he had received them from Mr. Samuel Sutton, on account of a stock transaction between them; and that Mr. Freshfield has since informed the Solicitor, that he received them direct from Mr. Sutton. The other notes have not been traced. One for £20 had the name of "S. Sutton" in front, and had been cut in half; another, for £20 had the name of "Goodwin, 26–2," implying the 26th of the 2d month. Another, for £5, had been cut in half, and had written on it "24–2 S. G.," also

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Mr. Chamberlin.

also "Francis, Auction Mart;" who, on being questioned, admitted that he (Francis) had received it from Godwin.

Mr. CHAMBERLIN attending the Committee.

Question.	*Answer.*
"You were guardian to a cadet of "the name of Bale, who went to Ma-"dras. Can you give any informa-"tion to the Committee as to his con-"nexions?"	"The signature purporting my be-"ing guardian to Bale is mine. I "had been told by Bale he was going "to have an appointment to India; "and that, as Bale was at variance "with his friends, he had asked me to "act as his guardian, and to put my "signature to the paper, over a glass "of wine. Bale, at the same time, "put a bag of sovereigns, and a "pocket-book with notes, into my "hands."
"How did you become acquainted "with Bale?"	"Bale was staying at the inn where "I was, the Castle and Falcon, in "the latter part of last January, when "he told me that he had got an "appointment given him for the East-"Indies: that he was at variance "with his friends, and asked me to "become his guardian, and said it "was a mere matter of form. He "was an expensive, rattling young "man. I kept his property about "three weeks. I gave it him once, "and he gave it back to me. I ad-"vised him to go into private lodg-"ings instead of living at an inn, "which was expensive. He almost "insulted me, and asked why I inter-"fered, and said I had nothing to do

 "with

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Examinations before Secret Select Committee.

Mr. Chamberlin.

Question.	*Answer.*
	"with his concerns. He left the "Castle and Falcon and went to the "King's Arms. He spent above £200 "when he left London to go to Ports- "mouth. I was in his company once "before, at Taunton. I knew nothing "of him, and should not have recol- "lected him again had it not been "for his dissipation. His character "was well known. When I objected "to become his guardian, he said it "was mere form that made it neces- "sary. I signed two papers before the "one now produced. They were "two affidavits: one was at the Man- "sion-House, and one at Guildhall. "Afterwards Bale told me that he had "heard from his brother where he "could get his certificate, at St. "James's, Clerkenwell. At the time "I signed the paper now shewn me, "the answers to all the questions "were blank, and only Bale's sig- "nature to them. I do not know the "Director's hand-writing.
	"I have known Mr. Gibbons for "the last seven years. I have never "seen him write. I dined with Bale "and Gibbons, and Bale paid Gib- "bons for his passage, I think £110 "or £120: it was not more than "£120. I cannot exactly state what "day the money was paid, but it must "have been in March. It was paid "in

Question.

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Mr. Chamberlin.

" in sovereigns and notes. Bale told " me he had been to his banker's, and " hoped to take £200 and odd pounds " with him to India. Mr. Bradley " told me, after he was gone, 'why " *Mr. Dasher* has sent after Coulson " for more money.' I know that Gib- " bons got Bale his passage, but I do " not know any thing of Bale's ac- " quaintance with Gibbons, and I " cannot say whether they appeared " to be privately acquainted, though " I rather should think not. Bale " gave his brother £500 before he " went off. His object in going to " the Lord Mayor was to swear about " his age. He sailed by the Resource.

" I have known Gibbons for the last " seven years. I have seen him, and " told him that Mr. Lawford had " called on me, to know whether I " had any concern in a Cadetship; " when Gibbons said, if my character " is impeached, I will call on Mr. " Lawford to-morrow. I told Gibbons " the particulars, and he said he had " nothing to do with it. I told him I " did not know a Mr. Sutton, and he " said he did not know such a person. " He did not know what had become " of Mr. Godwin, nor any thing of " Bale's acquaintance with him. I did " not tell Gibbons as to any inquiry " having been made at the banker's, " nor the notes having been traced;

 " I am

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Examinations before Secret Select Committee.

Mr. Chamberlin.

Question.	*Answer.*
	" I am certain I did not.—I have " known Mr. Gibbons as a broker. I " do not know whether he knew of " my having signed the paper, nor can " I say any thing as to his intimacy " with Bale. To the best of my know- " ledge, he knew nothing of my hav- " ing signed as guardian. I had seen " Gibbons and Bale together; and " there was a rattling chap, of the " name of Coulson, guard of the North " Devon Coach, at the dinner. Bale " had picked him up: he was fond of " blowing the bugle. I never heard " that Bale had purchased the Cadet- " ship, nor did he ever say to me " that he had. I certainly have said, " that I have no doubt he purchased " it. A person asked me if such a " thing could be done: I told him I " would make inquiry. I had no par- " ticular reason for saying I had no " doubt he purchased it. I wished to " try if I could get it out. I said to " the person who made the inquiry, " that I had no doubt Bale purchased " it; but which way he got it, or how, " or where, I did not know. I asked " him who were the friends from " whom he got it, but he would not " say. A person asked me if I thought " he could get an Assistant Surgeon's " appointment. I asked Bale, but he " said he could not tell. I thought " Bale

No. XXVII.

Examinations before Secret Select Committee.

Mr. Chamberlin.

Question.	*Answer.*
	"Bale had purchased his, but I could "not learn from him. The name of "the person who inquired of me was "Fry. He never obtained the ap- "pointment. He is too old; at least "he told me so, and I know he is "walking the hospital now.—Gib- "bons did not ask what Mr. Lawford "said to me: he appeared to be quite "indifferent. He said he had heard "that his name had been mentioned "in a matter about a Dr. Black or "Back.—After I had signed the paper "as guardian I thought I had done "wrong; and I should not have "done it had I thought more. He "said it was mere matter of form. I "was aware Bale was of age.—I do "not think that Colson knew any "thing about it. Bale only had him "to shew him all the houses of dis- "sipation and gambling. Bale kicked "up a row at the theatre, and knock- "ed down ten constables, and was "put into the watch-house all night. "—He told me that he had no "nearer relative than his brother, and "that was why he wished me to be "his guardian.—Bale told me that "the pocket-book which he gave me "contained £1,000. I never opened "it. He was a very unthinking "young man: I never saw his equal."
"How often did you see Bale, and	"It is impossible for me to say "how

No. XXVII.

Examinations before Secret Select Committee.

Mr. Chamberlin.

Question.	*Answer.*
" did he ever mention the name of a " Mr. Sutton or a Mr. Prescott to " you?"	" how often I saw Bale. I was a " fortnight at the same inn, the Cas- " tle and Falcon. I never heard him " mention the name of Sutton or Pres- " cott, nor did I know which Direc- " tor gave him the appointment. I " understood a Mr. Preston gave " it him.—He never told me who " got it for him. I asked him what " Director, and I understood a Mr. " Preston; but he would not tell me " through what interest he got it.— " I do not know whether he knew the " Director or not. I know a Mr. " Preston, a rich man, and that is the " reason why the name occurred to " me. Bale mentioned it. I ima- " gined Bale might have friends of " that name. I have heard him say " that he went about with different " officers. When he was an ap- " prentice he knocked down his mas- " ter."

Mr. Chamberlin withdrew.

PROCEEDINGS

ON THE

TRIAL OF AN INDICTMENT

IN THE

COURT OF KING'S BENCH, GUILDHALL,

BY A SPECIAL JURY,

BEFORE THE

RIGHT HONOURABLE LORD TENTERDEN,

THURSDAY, MARCH 6, 1828.

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No. XXVIII.

THE KING on the Prosecution of the EAST-INDIA COMPANY,

AGAINST

SAMUEL SUTTON, WILLIAM ANDREWS, JAMES PATTEN ANSTICE, JOHN EDWARD DESPARD, JOSEPH TYNDALE, GEORGE HENRY GIBBONS, THOMAS WRIGHT, and CHARLES ELTON PRESCOTT, Esquire, Defendants.

Ten Special Jurymen appeared.—Mr. Gurney prayed a Tales.

SPECIAL JURYMEN.

1. John Ord,	6. William Lawson.
2. James Scott,	7. Charles Augustus Robberds,
3. George Scrivens,	8. Edward Hanson,
4. Henry Alsager,	9. Philip Gowan,
5. Paul Pebrer,	10. Neil Black.

TALESMEN.

11. William Simpson.	12. William Hoy.

The Indictment was opened by Mr. Carter.

Mr. Quin.—My Lord: on the part of the Defendant, Anstice, I am instructed to withdraw his plea of not guilty.

Lord Tenterden.—This is not the place to do that. He should have come to me before: it is a very inconvenient thing to do it now.

Mr. Gurney.—He may consent to a verdict of guilty.

Mr. Quin.—I was only this moment instructed.

Lord Tenterden.—If you desire to have a verdict of guilty recorded before the cause proceeds, that may be done.

Mr. Gurney.—It is the same thing.

Lord Tenterden.—You desire to have a verdict of guilty recorded against him?

Mr. Quin.—Yes, my Lord.

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Mr. Solicitor General.

Lord Tenterden.—Gentlemen: the Defendant, Anstice, consents to your finding a verdict of Guilty against him.

The Jury pronounced the Defendant, Anstice, Guilty.

Mr. SOLICITOR GENERAL.

May it please your Lordship.

Gentlemen of the Jury:—I appear, in this case, on the part of the prosecution against the eight defendants who have been named by my learned friend. It is a prosecution that has been instituted at the suit of the East-India Company, for the purpose of detecting and bringing to punishment persons who have been guilty of a very gross act, in the sale of patronage belonging to their body.

Gentlemen: before I begin to narrate the facts of the case, I would state to you that the parties stand in very different relations: the first seven of them being those who are charged with the actual guilt of the transaction itself; but Mr. Prescott, the gentleman who is last-named upon this record, being charged only with having aided and assisted, and abetted the rest, but not himself charged with being the perpetrator or part perpetrator of the criminal act itself. It appears, also, by the statement of my learned friend, that several of these defendants have thought proper to withdraw their plea of not guilty, and submit to the judgment of the Court against them: and one of them, since we have entered the court, since you have been sworn, Mr. Anstice, has allowed a verdict to be taken against him. I have no other observation to make upon this, than that the prosecutors of this indictment are no parties whatever to any agreement, or any understanding, or any hope of withdrawment of punishment, held out to the parties who have so thought proper to withdraw their plea: it is a matter for their consideration. They have thought, I dare say, and rightly thought, that the evidence we were prepared to lay before you was so strong and conclusive, that rather than give the trouble of a more minute investigation, they have voluntarily, by the advice of those under whose care they have intrusted themselves, withdrawn their plea, and suffered judgment to be entered against them. At present, therefore, the only persons with whom you have any concern are Captain Despard, who has pleaded he is not guilty of the charge; and Mr. Prescott, who, I have already stated, stands charged with an inferior degree of guilt: not an actual participation in the original

transaction

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transaction itself, but with having aided and assisted, or at least, as I think the evidence will satisfactorily show you, of having connived in this act, when performed by a person of the name of Sutton, the principal agent.

Gentlemen: It will be my duty to lay before you, as shortly as I can, the evidence that will be brought in review before your judgment, and I think you will be of opinion that there is a case, not only irresistible against the first of those defendants, but upon the result of the evidence and the observations I shall make, if they shall be justified by the evidence I shall produce, you cannot entertain a doubt but that the Directors of the East-India Company would have deserted the duty reposed in them, and betrayed the trust they hold and the conduct of those large concerns which are intrusted to their care, if they had not investigated this question to the very foundation, and persisted in bringing it before a Jury of the country, to decide upon the guilt or innocence of the parties accused. This observation is the more necessary, because one of these defendants, Mr. Prescott, stands in the situation of being a brother Director with those who have instituted the prosecution; and it became therefore doubly their duty, it became an imperious duty, and from which it was impossible they should withdraw themselves, that they should bring the case of that gentleman, with the rest, before the judgment of a jury of their country; for it would otherwise have been said (and I know not what answer could have been made to it), that though they were willing to prosecute those, the immediately guilty parties who participated in the transaction, yet with a case laid before them, and their suspicions justly excited, they were desirous of throwing a shield over parties who were their brethren in the government of the body, and unwilling to bring all equally guilty to the punishment they deserved. It has therefore been determined, and upon the evidence before you, you will decide whether properly or not, that this prosecution should proceed, and that Mr. Prescott, charged as he is with having assisted, with a knowledge of the guilt of the transaction on the part of those who were the immediate perpetrators, should receive at your hands, as the evidence turns out, either a verdict of guilty, or a verdict of acquittal.

Gentlemen: It will appear to you, that the first intimation that was given to the East-India Company of any transaction which at all affected the sale of the patronage in question, was so early as the month of February 1827. But

before

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Mr. Solicitor General.

before coming to that, I shall beg leave to mention a few transactions that had occurred, which, although they have no immediate reference to the parties now upon the record, will clear the way to your more fully understanding the whole nature of the transaction, and introduce one of those persons who is a prominent party in the transaction.

It will be proved to you that a clergyman, of the name of the Reverend Dr. Back, residing at Little Hampton, in the county of Sussex, having perceived in the Morning Herald newspaper, in August 1826, one of those adv ertisements withfeigned names to them, or only letters (I believe M. N., in this case), denoting, as you often read, that if inquiry was made at a particular place, an opportunity offered to parents of obtaining asituation of a respectable nature for a youth under twenty, to go abroad, but his outfit would require means, without which no application need be made. Dr. Back having a son that he was desirous should obtain some employment of the nature pointed out in that advertisement, wrote a letter to the fictitious character, M. N., to which he afterwards received an answer. I shall not trouble you with the correspondence upon that occasion, any farther than that it introduces to your acquaintance before it had ceased, which was only the 20th of August, the name of Mr. Wright, one of the parties to this record. It seems, however, that Dr. Back being dissatisfied with the negociation, which went on to a certain extent, on that occasion, by a friend in town having called on the party in town to whom the letter had referred, entirely abandoned it. However, in October 1826, there is another letter addressed to him at Little Hampton, requesting him to call upon Mr. Wright, and stating where Mr. Wright, the defendant, then resided, which I think was in Alsop's Buildings, Regent's Park. Dr. Back accordingly, a short time after, came up to London, and called at the place to which he was referred, where he introduced himself to Mr. Wright: not under the name of Dr. Back, because upon these occasions there is always a little degree of reserve and secrecy; and having once written a letter in the name Edwards, he thought it would be as well, during the progress of this transaction, that he should not pass by his own name of Dr. Back, but by that of Edwards; he calls upon him, and has a conversation with him under the name of Edwards. Now, upon that occasion, the conversation turns upon the nature of the employ-

ment

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ment which Mr. Wright could furnish, and the price required for it; and it appears that Mr. Wright stated that the nature of the employment was that of a cadetship to India; and if it was a cavalry cadetship, it would be nine hundred guineas, and if in the infantry, from six to seven hundred pounds only. Dr. Back, however, having been informed, in the course of the former negociation, that no price would be required, felt himself certainly indignant at hearing so large a sum mentioned for the outfit, as it might be called, of his son; and upon this communication, which had been renewed in October, he again abandoned all further negociation, and went back again into the country.

It seems he remained there in quiet till the month of January 1827, the end of that month; and then, from some circumstances in his own family, he was desirous that his son should obtain this situation. But a thought came across him that there was something irregular and mysterious in this mode of acquiring his appointment, and he thought it right, at once, to direct a letter immediately and directly to the Chairman of the East-India Company, telling him all that had taken place upon the former occasions, and asking him, distinctly and openly, whether this was a proper mode by which the patronage of the Company should be obtained. The natural consequence of that letter was, that a very confidential officer on the part of the Company was sent down to Dr. Back. The Chairman and the Deputy Chairman (they being the persons to whom this letter had been communicated, and thinking it right, in a matter of this nature, that strict secrecy should be observed), sent down a very confidential person in their immediate employment to Dr. Back.

Without troubling you with a detail of what took place, it appeared fit to the Chairman and Deputy Chairman that, if possible, this opportunity of detecting what they were afraid was too common, namely, the trade and traffic in the patronage of the Company by guilty persons leaguing together, should be probed and sifted to the bottom, and the guilty brought to punishment; they therefore requested, and made it quite an earnest request on their part, that Dr. Back, himself an extremely respectable man, should continue in the negociation, in order that he might, if possible, trace the different steps in it, from those who it then appeared were most distantly connected with the

patronage

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patronage itself, and see whether or no there were any persons in the employment of the Company who were themselves participators in the guilt; or, at all events, bring to punishment those who thought proper thus to delude the public.

Now, after this communication from the Chairman and Deputy Chairman, you must bear in mind that every subsequent step was entirely known to the Chairman and Deputy Chairman, and considered by them well, and that nothing was done in the course of this transaction that was not immediately communicated to the confidential adviser so employed by them. I will now go on to state to you what took place from time to time, down to the period when the detection was complete, and shew you what share each party upon this record had in the transaction now before the Court.

Gentlemen: After Dr. Back had received this information, he writes a letter to Mr. Wright, whom I have already named to you as the person who had fixed the price of this cadetship, in a manner renewing and opening the contract that had been so abandoned, and he receives an answer to that letter upon the 27th of February 1827:

"Mr. Wright presents his compliments to Colonel Edwards," (that was the name under which the negociation was carried on on the part of Dr. Back), "and begs to say that the opportunity now exists for opening the treaty "alluded to in his note, but that he is going out of town to-morrow for a week "or ten days, and will commission a friend of his to attend to any communica"tion or appointment that Colonel Edwards may think proper to make for that "purpose, being perfectly conversant in those matters. Mr. W. begs to say, "that he only came to town on Sunday, which is the cause of Colonel Edwards "not having had an earlier reply; and shall feel obliged by his addressing him, "in future, to No. 63, Upper Norton Street, having quitted his house in "Alsop's Buildings. Mr. W. will feel obliged by an early reply, as the op"portunity may not last long."

And he dates this from 63, Upper Norton Street. So that the effect of this letter is to identify himself with the person afterwards found in 63, Norton Street: in effect, handing over Dr. Back from any further communication with himself at this moment, to this person, whoever he might turn out to be, who would be found upon the premises in Norton Street. Accordingly, a short time after, Dr. Back came to town. I think upon the 5th of March after, he

Mr. Solicitor General.

he sent a note to the direction of Norton Street, No. 63, having addressed it to Mr. Wright, who he supposes would be either there in person, or to whom it might be forwarded. He receives for answer to it: not any letter from Mr. Wright, but from a Mr. Gibbons, one of the other Defendants upon this record. The letter he receives is this:

"Mr. Gibbons, on the part of Wright, will meet Colonel Edwards to-morrow, at one o'clock, at 32, Walbrook, having an appointment there at that hour, and as Colonel Edwards desired his letter to be addressed to the City, it probably may be more convenient to him than Norton Street."

So that here is a direct appointment formed between Mr. Gibbons, the representative of Mr. Wright, and Colonel Edwards; that is, Dr. Back, who was come up to town for the purpose I have already mentioned to you.

On that day, the 5th of March, or the next day, the 6th of March, a meeting takes place. Dr. Back goes into the City, to No. 32, Walbrook, which is the chambers of a respectable attorney, I believe, who has nothing to do whatever with this transaction. He there meets Gibbons, that person with whom, till that moment, he was an entire stranger. Upon meeting Mr. Gibbons at that place, the conversation immediately assumes the form of a more direct treaty; for Gibbons, upon that occasion, points out the necessity of having the money brought forward directly; he again specifies the difference in the price of a cavalry and infantry cadetship; and he states that the mode in which these matters are managed, is by dividing a bank-note in two parts, by leaving one-half with himself or some banker, and the party so advancing to keep the other half, which finds its way to the first half when the matter is completed. That is the statement that Gibbons makes to Dr. Back. Accordingly Dr. Back being in communication with the East-India Company, for the purpose of following up the line which has been so pointed out by Gibbons, does at a subsequent day procure from them a note for £500, for the purpose of being deposited in the mode I have stated: but before they separated, on the 6th March, Gibbons produces to Dr. Back, and puts into his hands a printed form, which I believe is called "a cadet's Form of certificate and interrogatories," in order that Dr. Back may procure it to be properly filled up, in order that the intended Cadet may obtain the situation. I shall have occasion to make several comments upon this

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this as I go on. I shall only now state, that on this day, when the sum was fixed upon, this form of certificate was put into his hands by Gibbons.

Gentlemen: I think upon the 12th of that month the money was actually advanced. This printed paper having been put into the hands of Dr. Back, and as one part of this requires that there should be a certificate of the baptism of the intended candidate for the office, which requires some time to fill up if he has been baptized in the country, or in some remote part of the kingdom, a considerable interval took place. Dr. Back went down to Little Hampton, and this paper I have in my hand was sent down to Exeter, to procure the proper entry of the baptism, and the certificate of the baptism of young Mr. Back, the son of Dr. Back. It was afterwards sent up to Little Hampton, and was sent by Dr. Back to Gibbons, covered with a letter addressed to Gibbons. I do not know that I need trouble you with such minute details; but it is acknowledged afterwards by a letter from Gibbons, and nothing further that is material takes place till the beginning of April.

Gentlemen: About the 10th of April Gibbons writes a note to Colonel Edwards. "Sir: I wrote you yesterday, to which I beg leave to refer; and "according to what I then wrote, that you would hear from me again this "day, I have to request you or the young gentleman will meet me at 32, "Walbrook, on Thursday next, at half-past 11 o'clock, and be prepared to "carry the cavalry appointment into effect." The meaning of carrying the cavalry appointment into effect, was producing, on the part of Dr. Back, the stipulated sum of £500, which was first to be laid down before the remainder was advanced. On the 12th of April Dr. Back comes; and having obtained a bank-note of the value of £500 from one of the officers of the Company for this purpose, it was cut in half; one is delivered to Gibbons, to be kept by him until the appointment is completed, and the other is kept by Dr. Back: and, upon that occasion, Gibbons gives a regular receipt, that he has "Received, 12th April, 1827, of Dr. Back, the half of a £500 Bank "of England note, which I engage to return, in case the appointment agreed "upon does not take place."

Now so the matter stands, I think, up to that day. On that day a new person is introduced upon the stage; for upon that day a person of the name of Tyndale (Joseph Tyndale), one other of the defendants, is introduced

by

Court of King's Bench. — *Mr. Solicitor General.*

by Gibbons to Dr. Back; to the very great surprise of Dr. Back, he found that, although only two days had passed since the deposit of the half of the £500 note, by some means or other, that £500 note has got shifted into the hands of Tyndale, or at least that Tyndale produces an engagement that he has in his hands, that he only retains the £500 until he has performed his engagement with Gibbons; thus getting one link further, as if he was the party to receive the money, or was to procure some other person, this Tyndale, for instance, upon the present occasion, who was to receive the money if he procured the appointment, or a part of it, or what agreement was made between them, we know not, and it was immaterial to inquire; but the agreement entered into with Gibbons was, by some means or other, transferred to Joseph Tyndale. This man, Tyndale, seems to express some degree of disappointment that the whole matter has not been concluded, and promised very largely that a very little time should elapse till it is. At the same time, as he naturally supposed that Dr. Back would begin to be a little impatient, as his money had been lodged, he endeavoured to put him off for some time, upon the impracticability of it being then immediately concluded, on account of the existing state of things; stating, that the ministry being unsettled, there was a great difficulty in getting this Cadetcy appointment. What part of the ministry he alluded to, I know not; but, I believe, that was as true as many other statements I shall have to refer to. I need not remind you, that that was exactly the time when there was a change effecting in the administration of the country.

So, Gentlemen, the matter rests, considerably to the apparent disappointment of Dr. Back, who was urging the completion of this matter, till the 25th; and then it is stated, that the matter will very soon be brought to a close, and another person is introduced, Captain Despard, another of the defendants. He comes in, and states his great surprise that a matter of this sort has been allowed to be under the conduct of Mr. Gibbons and Mr. Tyndale; he does not wonder that this disappointment has taken place; but he says, "I will put you into a way to get it completed directly—I will introduce "you to a partner of a great East-India house, Mr. Anstice," who is one of the defendants.

But before Captain Despard makes his appearance, which I think was in the

afternoon

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afternoon of the day, there has been an application made to Dr. Back to furnish the remaining part of the money which was to be the payment for the Cadetship. You recollect, only £500 have been already advanced. It is stated that not a single step can be taken further in the progress of this matter, unless there is another note of £300 treated in the same way, cut in two, and deposited one-half with Mr. Gibbons, and the other kept. That is done on the 25th of April; so that now you perceive, that all the money that was to be forthcoming on the part of the purchaser, has been parted with by him and put into the hands of Mr. Gibbons, who appears to be the stake-holder. I have told you that Captain Despard affected a high tone; he speaks with the same disrespect of Mr. Tyndale that Mr. Tyndale had expressed towards Mr. Gibbons, and that now the money had been advanced, there could be no excuse for not carrying it into effect. "I will take you to a person, and the matter shall be managed immediately;" and he accordingly takes him to Great St. Helen's, where Captain Anstice has a counting-house, and when he gets there he finds Captain Anstice, stating to him that he has had in his custody for some time the half of that £500 note, and when the other is applied to it there will be no difficulty in carrying the arrangement into effect. So that this money forms the connecting link between three of the persons I have mentioned to you, between Mr. Gibbons, Mr. Tyndale, and Captain Anstice; and that Captain Despard is the person who cements and links together all three, being the medium of introduction of the one to the other. During this time Captain Despard is as full of his promises as the preceding persons. He states, a little difficulty has arisen, in consequence of the Director he named not being in town; that that Director, or another he named, are the persons from whom it is to be obtained. I do not mention the names at present: if their names should appear, they are in court, and they are ready, upon their oaths, to deny having any share in its participation. In short, it is only the means by which these inferior persons who are gulling the public, in endeavouring to impose upon their betters in society and obtaining an introduction to Directors, it is only the mode by which they carry their base intentions into execution.

We then come down, Gentlemen, to the 25th of April; and that is the most important part of the case, because upon the next day it is that, for the first

first time, Captain Prescott will be brought forward to your notice.—Gentlemen: I will now trace out, because it will be more convenient to make the matter clear to you, after observing that upon the 25th of April the name of Captain Prescott is brought forward,—I will go on and trace the remainder of the parties up to the time when the detection takes place; but I will refer back to this 25th of April, to shew how far the evidence will implicate Captain Prescott in a guilty knowledge, or means of knowledge, of this transaction.

Court of King's Bench.

Mr. Solicitor General.

Gentlemen: Upon the 27th of April Dr. Back attends again, according to appointment, at Captain Anstice's office, which is at St. Helen's. He is informed that nothing as yet is accomplished. He begins to be extremely anxious; perhaps, not so anxious as if the money was his own: he would probably then have urged with a greater degree of vigour the completion of the contract; but he shewed sufficient to induce them to promise to put into exercise all their powers to get it completed. He calls there two or three times in the course of the day, and nothing takes place. At last Captain Despard, who is still appearing upon the stage at Captain Anstice's, and is the conductor of Dr. Back, Captain Despard states he had sent to Regent-street, to have some intercourse with the gentleman who was to procure the appointment. This is very much to the surprise of Dr. Back, who had never before heard of any person in Regent-street. He asked, "Why do you introduce "a new person to us? I thought you told us that A, B, or C, at the head of "affairs, was the person to whom you looked; why do you now say, a stranger "is the person from whom you are to obtain it?"—He could get no answer to the question; but, on the following day, Captain Despard called again, and said all was finished. He said that at first; but he corrected himself, and said, "all will be completed immediately; there is no doubt that all will be "immediately right." Still nothing came. The morning of Saturday, the 28th of April, was wasting away; Dr. Back calling from time to time, put off for half an hour, and then calling again. Nothing comes forward in the course of that morning, until at last Captain Anstice, being tired out, says, "We will go together to a gentleman at Waterloo-place, Regent-street, and "we will see what is to happen there." Accordingly Dr. Back, accompanied by Captain Anstice, goes to the office of a gentleman of the name of Andrews, in Regent-street, who is another of the defendants upon the record.

 He

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He does not see him when he gets there; Mr. Andrews was absent, but had left word he should be there at a certain time. Although they wait long beyond that time, Mr. Andrews does not make his appearance. Then it is agreed, that the very next morning Dr. Back shall call upon Captain Anstice at his private house, and they shall go together to Mr. Andrews at his private house, and see what was going on as to this appointment. That will be on Sunday; and accordingly on Sunday, the 29th of April, Dr. Back and Captain Anstice call upon Mr. Andrews, and saw Mr. Andrews, and a conversation takes place. The precise purport of the conversation will be explained to you by the witness when he comes: the effect of it was, that every thing would be completed on the following day. At the same time a great caution is given to him not to say any thing upon the subject to any body; that it is extremely important that no one should know what was going on; and that it was no fault of his that it was not completed, for his client was in great want of money at that time, and it would be of great importance to him to receive it. So that now I have introduced another defendant to you, Mr. Andrews. Gentlemen: Monday was the 30th of April; and that Monday, the 30th of April, had been fixed by Mr. Andrews and Captain Anstice for the purpose of fully completing the transaction. Still there is some delay, and some fresh excuse why the appointment does not come forward. You will hear the reason why, when I come to state to you what was going on with respect to the appointment at the East-India House, between the nominating and recommending Directors.

On this day, the 30th of April, another of the parties we had long since forgotten in the transaction steps forward again. Mr. Gibbons sends a note on this day :—" Sir, I am quite in the dark" (this is to Dr. Back) " as to what is " going on. I went to Mr. Anstice's at three o'clock, being told you were to " be there at that time; but did not meet you, and after waiting half an hour " was told you had been and gone. I was desirous of knowing what was " likely to be done, as I am keeping an infantry appointment open,and the party " complains of my not giving an answer I shall expect to see you in the " morning, and will call here about eleven." A pretty good intimation of the necessity of making these inquiries, when Mr. Gibbons talks so quietly that he is keeping an infantry appointment open, and he desires to know what is to become of it, as the owner was impatient. I think it was high time for

for the Company, when they discovered any thing of this sort, to probe it to the bottom, and see who were the guilty parties. However, I only introduce this to shew that, on this day, Gibbons steps forward again, who supposes that this has got into some other train, and that he shall not receive the money he expects. It is only one proof, among others, that the parties cannot trust each other, and that they are introducing link after link, in order that you may not be able to trace it out.

That brings us to the next day, Tuesday the 1st of May, when a letter arrives from Captain Anstice addressed to Colonel Edwards, a *nom de guerre* while he was conducting this business, stating that he must either come by himself, or send his son by himself, to Mr. Andrews' office in Regent Street: that he must come the following morning, either by himself, or send his son by himself. Matters are now arriving very closely to their ultimate termination, for on the very following day, Wednesday the 2d, the whole of the scheme takes effect, and the evidence we bring forward will be complete. Accordingly, the following day the son goes early by himself to Mr. Andrews' house, and there he discovers a stranger he had never seen before, but who turned out to be Mr. Sutton, one other of the Defendants upon the record.

What does young Mr. Back go there for? He goes for the purpose of filling up one part of this printed form, which it was necessary he should fill up himself, and which had been left unfilled up till that moment it is put into his hands in the office of Mr. Andrews by Sutton, with a pencil mark upon it denoting the manner in which it is to be filled up: in fact, containing the name of the Director who had recommended him to the preferment. So that there you have a new person in that stage introduced, you see, at the last moment, Sutton: but at the most important stage, because it is just preceding that time when the £300 and £500 notes are to be made complete, and when they would be efficient in the hands of the bearer.

As soon as that is done, Dr. Back is told to repair to the East-India House, and that Mr. Sutton and Captain Anstice will be there as soon as he is. Accordingly, on the 2d of May, they both proceed from the west end of the town, first to the Monument Coffee-house, where Dr. Back had appointed to be present, before all the parties repaired to the India-House to pass the young man. They proceed to the Monument Coffee-house, and there they find Dr. Back,

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Back, and a conversation takes place as to the remaining halves of the two notes, the parties (that is, Andrews and Sutton) insisting that they would have both the halves of the notes delivered to them before they would stir a step further; but Dr. Back, who seems to have some intelligence upon this subject, saying, "no, it is quite sufficient if I trust you with the half of the £300; I "will not give you the half of the £500 until the young man is actually passed. "We will all go together, and as soon as he is passed, the half of the other "shall be put into your hands." At last it is so agreed, a considerable discussion having taken place. The half of that note having been delivered to Sutton, who is to apply for the other half to Captain Anstice, they proceed together to the India-House; and when they come there, the papers then being completed and filled up, they are put into the hands of a clerk, a Mr. Haldane, one of the clerks in the Cadet-Office; it having been previously arranged and orders given, that the moment the papers came in they should be handed up to the Committee of Directors. In consequence of that, I need not state the young man was unable to pass, and the whole thing is blown up. Sutton is found at an opposite house very much alarmed, to which Dr. Back goes back. He finds Sutton alone, or Sutton and Andrews together, and stating he should be a ruined man if this matter was discovered, and then stating he was Sutton, and giving his direction; and I believe it will appear at a subsequent period, that he goes down to Dr. Back to make inquiries.

On the same day, I should state that Gibbons is found, just at the time the parties enter the India-House, watching in the office to see what was going on, knowing that the passing of the young man will take place that day, to take a share in the plunder.—Dr. Back asks, "what do you do "here? we have had nothing to do with you for the last six months." Gibbons says, "I come on behalf of myself and Mr. Wright, to get the diffe- "rence between the sum we first named and the sum you have got it for; "for, as I told you it would cost nine hundred guineas and you have got it "for £800, there is £145 to spare; and I mean to have the odd £45, and give "Wright the £100." That shews the connexion between all the parties, from the first to the last.

That, Gentlemen, is pretty much the outline of the case against the first seven

seven of the Defendants; and upon that evidence, even if it had not been corroborated, as it is now beyond all dispute, by the acts of the parties themselves pleading guilty to the indictment, and one of them taking a verdict by consent, there could be no doubt in the minds of gentlemen of your intelligence, that they were all of them, and not part, guilty of the transaction.

But I come now to state the facts that relate to Mr. Prescott: and I begin by stating that there is not the least charge against him, nor am I instructed to state that he was guilty of any actual participation in the money given for this appointment. He is charged only with having abused the situation he held, by knowing, or at least having certain means of knowledge of that which had taken place in the course of this transaction by Sutton, and yet lending his aid to it, by giving Sutton the patronage to be so disposed of.

Now what is the exact connexion between Sutton and Mr. Prescott, I am not able to trace out: they are friends, and have long been intimate and acquainted. That Sutton is a person who has served Mr. Prescott very much in the course of some elections that have taken place, that I believe I shall be able to prove; and whether, by having this patronage in his power, Captain Prescott thinks proper actually to sell it and convert the money to his own use, or whether he thinks proper to give it to a person from whom he has received services and is indebted, that that person may convert it into money and apply it to his own purposes, does not make any material degree of distinction between the parties accused. In either case, it is a gross perversion of the purposes for which this public trust is reposed in him: it is rather a shade, a degree in guilt, than in the degree of fraud.

But I now proceed to state the evidence that will affect Mr. Prescott. It will appear that on Thursday, the 26th of April, he made application to another Director, Colonel Toone, a gentleman who has been a Director of the Company for the last thirty years, in order to lend him (which is by no means an uncommon transaction) an appointment for that year of a Cadetship in the Madras Cavalry. Colonel Toone said he was extremely welcome to it; that no man in England was more welcome to his patronage than Mr. Prescott. This was on Thursday, the 26th of April; and I have already stated, while I was mentioning the other steps in the transaction, that this was the

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the day immediately following that upon which the £800 had been completely deposited in the city with Gibbons or Captain Anstice. It seems that on the Friday some conversation had taken place at the East-India House, which it is unnecessary for me to state. I only state it as occasioning an act done by Colonel Toone: but some conversation took place at the India House, that made Colonel Toone uneasy at the promise he had made to Mr. Prescott to lend him this appointment, and in consequence of that, Colonel Toone called upon Mr. Prescott, or met him at the India-House, and a conversation ensues, that it will be extremely important for you to bear in your minds. You will perceive, when this paper is put into your hands, that there is a letter signed by the party who recommends any young man to an appointment under the East-India Company, in which he states that he declares upon his honour that he received the nomination of Cadet for the Madras Cavalry from one of the Directors gratuitously, "and that I have given it gratuitously to Mr. Edward "Drake Back, with whose family and connexions I am well acquainted." There is upon every one of the papers, before a Cadet can be passed, a letter written by the recommending person to the Directors, from which it is called "a recommendatory letter;" and there is an assertion from this person so recommending, that he is well acquainted with the connexions and the family of the person so recommended to notice. In fact, that is the only security the Directors have that their patronage shall not be abused. They know nothing of the young men brought forward; but each individual Director knows the person to whom he has given his patronage, and if he can trust him; he sees his name at the bottom of the letter, that he is either the parent of the party, or well acquainted with the party recommended. The only pledge the Directors have left that improper persons shall not be admitted into the service of the Company, is this letter of the party so recommending.

Gentlemen:—Upon this occasion, instead of being signed, as the letter ought to have been, by some person who had actually recommended young Mr. Back to this patronage of the Company, this document is irregularly and is unusually, and therefore I say improperly, signed by Mr. Prescott himself. What does Mr. Prescott assert in this letter? He asserts that young Mr. Back is a person with whose family and connexions he is well acquainted. This is signed by Mr. Prescott at the East-India House, on Saturday the 28th of April.

April. I have told you, on Friday afternoon something had occurred to render the mind of Colonel Toone uneasy that he had given this office, and a conversation takes place to which I wish to call your attention. Colonel Toone asks Mr. Prescott what he knows of young Mr. Back, what he knows of his connexions—the answer given (I wish to give it in the very words) is this:—he stated that he knew the young man's father, that he was a respectable clergyman residing in Devonshire, that the young man wanted only two months to be twenty-two years of age, and that he was as fine a youth as any in England. I am sorry to say, Gentlemen, that not one part of this assertion is borne out by the fact. Mr. Prescott did not know the father of Mr. Back, he had never seen or heard of the father before this transaction. Dr. Back was not a clergyman in Devonshire; for the last twelve years he had been living abroad, and I believe has not been in Devonshire for a longer period than the twelve years in question. The young man wanted more than two months of twenty-two; he was not at this period more than twenty-one and a half. And this is not an immaterial allegation, because the time at which a young man would be superannuated being twenty-two, the nearer he approaches to that age the more necessary it is that all due diligence shall be used to procure the appointment: there is the more occasion to look about to see that the young man is provided for. That assertion was one not founded in fact; and when he asserts he is as fine a youth as any in England, I am told that that is by no means a proper and just description of the gentleman. However, he will be called as a witness, and you will see whether that is a proper description of the party. So that you have the letter filled up irregularly by the person who ought not to have subscribed it, but who ought to have insisted on the party who had obtained the recommendation from him to have been the recommender upon the face of the letter. And who is that party? I have no scruple in saying it is Sutton:—the facts of the case shew it was Sutton, and Sutton only. Sutton ought to have written this letter; and Mr. Prescott, instead of being the party recommending, ought to have been the nominator: he ought to have been the Director nominating, and Sutton the party recommending. Why was this alteration? why was not Sutton used as the name? Why was not he brought forward, on this occasion, as the party who recommended the young man? I must draw the inference, and the justice or the want of pro-

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priety in making the inference must be left to you. I must say, because a very short period before that, in the month of February, the very same transaction took place, his giving an appointment to Sutton; and Sutton has signed the recommendatory letter in February before that, and Mr. Prescott had been the nominating Director. I say, therefore, you will judge whether the inference is a just one, that the object was not to bring forward the name of Sutton in these papers; that recourse was had to this mode of filling up the paper, and that the ordinary business and regular course of making this appointment was not adopted.

Gentlemen:—We have now got to Saturday the 28th, on which day the conversation takes place I have alluded to. In the course of the morning of the 28th, Mr. Prescott goes or sends to the office of the Cadet clerks, Mr. Prescott having a right to do that, as all the other Directors have. A clerk of the name of Sharp, a person who will be called to you, will state what took place. Mr. Prescott produced this printed paper, filled up in the manner I have stated to you. I pause to ask you how could this paper have come into the hands of Mr. Prescott. I have shewn that this paper was given by his friend and former manager in this transaction to Dr. Back, to be filled up to a certain extent. I have shewn you it was transmitted back to Gibbons; and it is a perfect blank. What becomes of the paper from its reaching Gibbons to its appearing in the hands of Mr. Prescott? Let that be explained. I suppose an explanation of it, that Sutton is the person whom I have shewn to be colleaguing with the others, and one of the parties in the conspiracy; that Sutton must have been the person who, as he had asked this favour of Mr. Prescott, so he had put this appointment into the hands of Mr. Gibbons. He tells Sharp the manner in which the remaining part shall be filled up; but as if he felt conscious at the moment there was something irregular in this, he says, " but will this be regular?" " No," says the clerk, " that is not regular, " the name of the person who solicited the appointment and obtained it from " the Director, the person who recommends the candidate, the friend of the " young man who is recommended to the notice of the Director, should be " the person to sign it. You ought not to sign it: you are the nominator, " and although it is your own, you have borrowed it from Colonel Toone, " and you ought to have signed it, and the real party should have nominated

" him.

" him. Shall I make out the paper in the usual way?" He says, " No: I " have given Colonel Toone a great deal of trouble, fill it up in the usual " way and I will sign it myself:" and he signs it, and a note is to be written accompanying this, and it is to be sent to Colonel Toone at the west end of the town. About nine o'clock in the evening a sealed paper comes containing this which I hold in my hand, containing also a note written in the name of Mr. Abington, who was the head clerk of the office, but who had been absent that day from illness, but in whose name it was written at the express request of Mr. Prescott. A sealed paper, inclosing this note and these documents, arrives at the house of Colonel Toone; it being necessary for him to make the ultimate signature at the bottom of it, as the party who declares that to his belief all is correct. I have already told you what had taken place in Colonel Toone's mind: he was still so dissatisfied, even that night he writes one note to Mr. Abington at the East-India House, requesting that the young man should not pass until he had seen him himself; and he writes another note, which he sent by his own servant to Mr. Prescott, the defendant, telling him he must not bring him to the India-House, to pass him, until he has seen him, and he is satisfied he is the person he is represented to be.

Gentlemen: Let us follow up this sealed parcel. It takes a very different course from that which was intended; it arrives at Colonel Toone's, and he, after signing it, re-directs it to Mr. Abington, the head clerk of the office. An East-India House messenger, who had received his previous instructions, instead of carrying it to Mr. Abington, carries it on to the house of Mr. Prescott, and Mr. Prescott breaks open the seal and obtains possession of this paper. The next day is Sunday, and nothing is done upon this part of the transaction. I have already stated what the other members were occupied on this day; they were calling at Mr. Andrews's private house.—Monday morning comes. You recollect the note written to Mr. Prescott, requesting him to attend with the young man, and produce him before any thing was done with the papers. On the Monday morning Colonel Toone goes to the India House. No one appears from Captain Prescott, nor the young man himself; therefore, although Mr. Prescott had received this intimation of the doubt existing on Colonel Toone's mind, and his anxiety that all should be set right before the appointment was ultimately made, he does not do that which,

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I must say, any man who was occupied in a straight forward course would be most anxious to do, to stop these papers and prevent their being carried through the office, until that explanation had been given to Colonel Toone, the nominator, which he demanded.

Then, again, on the Tuesday morning I have stated what took place. There is nothing further as to Mr. Prescott, except this, that while the young man is there, he calls the young man before him, and asks him how old he is, and whether he likes to go to India? But not a syllable upon that point which ought to have excited a suspicion in his mind; not a word about the party recommending him, or whether it was obtained gratuitously or not. All that which he must have known was passing in the mind of Colonel Toone, and most anxiously passing there, all that is kept back; there is nothing but that simple inquiry.

Gentlemen: These are the facts of the case. Upon the particular circumstances that appear to me to constitute a case against the other defendants, I shall not trouble you with a word. These are the facts which, I say, appear to me to constitute a case, if not of conviction, at least of such great suspicion against the defendant, Mr. Prescott, that I do take on me to say, the Directors would not have performed their duty to the public, if they had not included his name in the present indictment.—First, I think it is perfectly clear, that a sale had been effected of a cavalry appointment for the sum of £800; that is put beyond all dispute. It is, in the next place, clear that the party who obtained the advantage of the appointment obtained it through the meansof Mr. Prescott:—it is clear, he is a stranger to Mr. Prescott; and it is clear, that the party who had recommended him to Mr. Prescott had, a short time before, obtained a similar appointment for another person. It is clear, that Mr. Prescott has signed this recommendatory letter not in the ordinary course. It is clear, that the recommendation, to which his name is subscribed, contains facts that are not founded in truth. It will be proved to you, beyond dispute, that when his particular attention is called to these facts, a conversation takes place between Colonel Toone and himself, in which he states, his attention being called to it, facts not consistent with the truth. It is clear, that the paper which we have traced into the hands of Mr. Gibbons, by some means or other comes into the hands of Mr. Prescott. It is clear, that when

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when that paper is sent by itself, at night, directed to Colonel Toone, it gets back into his hands again: not in the mode in which it was intended by Colonel Toone; for by him it was directed and addressed, and intended to be passed back to the regular office. But there is, at least, this fact which appears to me to afford the most pregnant evidence against him, that when all those suspicions were raised, he knew what Colonel Toone's mind was working upon; and when he had it in his power to stop the papers till a satisfactory explanation was given, he does not only not keep the appointment back for that purpose, but he allows, as far as he is concerned, the previous paper to pass. It is not necessary to state that the Chairman, and Directors, and Committee, had taken effectual care that the paper should not pass, and that was the course followed.

These are the facts of the case. If any observations I have made do not appear to you to deserve the weight that, in my mind, I am giving them, you will reject them. If there is any doubt in this case, I am sure I only speak the sentiments of the Directors, in saying that they would be most happy, if, after this full investigation, the name of Mr. Prescott should appear perfectly unconnected with the transaction; and, as far as I am concerned, it will give me the greatest pleasure also: but I should have deserted the duty that has placed me here, if I had not made the observations that appeared to me fairly to be drawn from the evidence to be brought before you.

EVIDENCE FOR THE PROSECUTION.

The Rev. EDWARD BACK, D. D., sworn.

Examined by Mr. Serjeant Bosanquet.

Rev. E. Back.

Where do you reside?—At Little Hampton.

How long have you resided there?—About a year and a half, or very nearly two years.

Where did you reside before that?—In various parts of the Continent.

How many years?—Fourteen or fifteen years.

Have you ever lived in Devonshire?—Yes.

Have

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How long ago?—About that time, fourteen or fifteen years.

Was your son born there?—Yes, he was.

In the autumn of 1826, was your attention attracted by any advertisement?—Yes, it was: an advertisement in the Morning Herald.

What did it relate to?—To a good situation for a young man who was inclined to go abroad: a young man under twenty.

In consequence of that advertisement, without going through the particulars in this part, did you obtain an interview with any of the defendants?—Yes.

Which of them?—Mr. Wright.

At what place?—At his own house. I believe it was in Allsop's Buildings.

Is that near the Regent's Park?—Yes, I believe it is.

Did you call upon him?—Yes.

Just look at that advertisement *(handing a newspaper to the witness)*, is that it?—Yes, this is the advertisement.

The same was handed in and read, as follows:

"Morning Herald, Friday, August 11th, 1826.
"To Parents and Guardians. A permanent situation of a respectable
"nature now offers for a Youth under twenty to go abroad. His outfit
"would require means, without which none need apply. Address, by
"letter only, post-paid, to M. N., 33, Craven Street, Strand."

You called at Allsop's Buildings?—I did.

Did you see Mr. Wright?—Yes.

Did you call in your own name?—No.

In what name?—The name of Edwards. It was intimated to me that the Parent or Guardian would not be treated with. I was first of all told that no one else would be treated with.

You called in the name of Edwards?—Yes.

Was it "Mr. Edwards" or "Colonel Edwards"?—Colonel Edwards.

At that time had you any cards with that name?—I had then: I have not any with me.

You did happen to have some of those cards?—Yes.

At the time you called upon Mr. Wright, did he mention the nature of the appointment to you, and how it was to be obtained?—Yes.

Will you state that?—He said £600 or £800 would be necessary.

What was the nature of the appointment?—A Cadetship to India in the Company's service.

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What did he say about £600?—That it would be £600 if it was in the infantry, and £800 or £900 if in the Cavalry.

About what time was this?—May I be allowed to look at a memorandum I made?

About what time, it is not necessary to be very particular?—A little more than twelve months since. I have a memorandum I made, if you will allow me to look at it.

Before that time, had you learnt that any price was to be paid for the appointment?—No, I understood quite the contrary.

Did you tell Mr. Wright that?—Yes, I did.

After you learnt that those prices were asked for the appointment, did you continue the negociation?—No, I broke it off.

After this, did you communicate to the Chairman of the East-India Company the circumstances that had taken place?—Not before I intended to renew the negociation. I intended to renew the negociation, and before I did that I communicated to the Chairman of the Company; because circumstances had altered, in a pecuniary point of view. My son had become of age, and was entitled to a small property of his own.

Then you wished to renew the negociation; but before you did so, you communicated with the Chairman of the Company?—Yes, I did; because there appeared to be a mystery about it, and I was afraid that all was not fair.

Did you take any step for the renewal of that negociation before you had communicated with the Chairman of the East-India Company?—No, I did not.

Did you renew that negociation at the request of the Chairman?—Yes; after he had told me the dangerous situation I was likely to be in, and that it was totally against the law, against the Act of Parliament.

Did you, from time to time, communicate to the Chairman of the East-India Company, the different steps you took in this transaction?—Yes, I did.

In consequence of that, did you call again at Allsop's Buildings?—Yes, I did.

On what day?

Lord Tenterden.—Upon Mr. Wright?

Mr. Serjeant Bosanquet.—It led to that. Did you succeed in seeing Mr. Wright there upon that occasion?—No, I did not.

Did you become acquainted with Mr. Wright's hand-writing?—No, I cannot say I did.

Did you receive this letter? (*handing one to the witness*). You had called at Allsop's Buildings?

Lord Tenterden.—Did he leave his name or his card?—I left my card, in the name of Colonel Edwards.

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Mr. Serjeant Bosanquet. Were you referred at Allsop's Buildings to any place?—Yes, I certainly received this letter.

Lord Tenterden.—How soon afterwards?—I suppose about two or three days. I can tell by a memorandum I made at the time.

Lord Tenterden.—If you made a memorandum at the time you can tell us.

Mr. Serjeant Bosanquet.—It bears date the 27th of February, did you receive it about that date?—Yes, most likely the following day.

Mr. THOMAS VARLEY sworn.

Examined by Mr. Serjeant Bosanquet.

Mr. T. Varley.

Are you acquainted with the defendant, Wright's hand-writing?—I am.

Look at that letter (*handing a paper to the witness*); is that his hand-writing?—Yes, it is.

Lord Tenterden.—Have you any more of Mr. Wright's letters? You may put them into his hands at once.

Mr. Serjeant Bosanquet.—No, my Lord.

Lord Tenterden.—Will you have it read now?

Mr. Serjeant Bosanquet.—If your Lordship pleases, it would be more convenient.

The same was read as follows: dated "63, Upper Norton Street, Portland Road, February 27th 1827." *Addressed by Mr. Wright to* "Colonel Edwards, to the care of the Rev. Dr. Back."

"Mr. Wright presents his compliments to Colonel Edwards, and begs to "say that the opportunity now exists for opening the treaty alluded to in "his note; but that he is going out of town to-morrow for a week or ten "days, and will commission a friend of his to attend to any communication "or appointment that Colonel Edwards may think proper to make for that "purpose, being perfectly conversant in those matters. Mr. W. begs to "say, that he only came to town on Sunday, which is the cause of Colonel "Edwards not having had an earlier reply, and shall feel obliged by his "addressing him, in future, to No. 63, Upper Norton Street, having quitted "his house in Allsop's Buildings. Mr. W. will feel obliged by an early "reply, as the opportunity may not last long."

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Rev. E. Back.

The Rev. EDWARD BACK, D.D., called again.

Examined by Mr. Serjeant Bosanquet.

Did you call according to that letter?—I did.

In consequance of that, did you see one of the other Defendants?—I saw Mr. Gibbons.

Look at that letter. Did you, in the course of the business, become acquainted with Mr. Gibbons' hand-writing by seeing him write?—I could not say I could swear to his hand-writing, but I firmly believe it to be his hand-writing.

Lord Tenterden.—Did you correspond with him?—I have received letters from him.

And answered them?—Yes, and answered them.

You believe it to be his hand-writing?—Yes.

Lord Tenterden.—Then it may be read.

The same was read, dated "Monday, 25th of March 1827." *Addressed to* "Colonel Edwards," *as follows:*

> "Mr. Gibbons, on the part of Mr. Wright, will meet Colonel Edwards "to-morrow at one o'clock, at 32 Walbrook, having an appointment there "at that hour; and as Colonel E. has desired his letter to be addressed "to the City, it probably may be more convenient to him than Norton "Street."

In consequence of that note, did you call at Walbrook?—Yes, I did.

How soon?—I suppose in the course of a couple of days afterwards. I came up to town immediately.

Did you make any memorandum from which you are able to speak to the date?—Yes, I made a memorandum of each day.

Then look at the memoranda.

(*The witness produced a paper.*)

Lord Tenterden.—Have you copies of these letters?

Mr. Gurney.—Yes, my Lord.

Mr. Serjeant Bosanquet.—In consequence of that note, what day did you call in Walbrook?—I called on the 6th of March.

The day following?—Yes, and on the 8th also.

Did you see Mr. Gibbons at both times?—Yes.

Upon either of those days, and which, had you any conversation with him respecting the cadetcy?—On both days; the conversation was on nothing else.

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Rev. E. Back.

Will you state what passed? I do not want to go into details.—He told me the price of a Cadetcy in the Infantry was £600, and the Cavalry 900 guineas.

Did he inform you how the negociation was to be conducted?—Yes, by depositing money in the hands of any banker, or by cutting bank-notes in two.

Did he say any thing further?—No.

Did you receive from him any paper?—Yes, I certainly did.

Look at that paper (*handing a paper to the witness*).—Yes, I received that.

Did he deliver you that paper?—Yes.

Where did he give it you?—I think he gave me this in Walbrook. However, he gave me one in Walbrook, and he gave me some at the Cadet Office.

He gave you a blank form at the Cadet Office and one in Walbrook?—Yes.

You received that from him?—Yes.

What did he tell you to do with that paper?—To get a certificate of baptism properly filled up, and then return it to him.

Did you send it into the country for the purpose of having it filled up?—Yes.

Did you receive it back again?—Yes.

Filled up?—Yes.

Did you return it to Mr. Gibbons?—Yes.

Did he shew you any other paper, or make any observation respecting the appointment of Cadets?—Yes, he shewed me two different receipts which he had of money that had been paid him.

What did he say about them?—It was an acknowledgment to return the half notes, in case the promise was not fulfilled.

Did he say any thing about any Cadetcy from the country?—Yes.

What was it?—He said there was a young man he had just passed, who had gone into the country. He had not embarked yet: he was gone to take leave of his friends.

What part of the country?—I think he said Devonshire.

After you had returned the paper to him, filled up, did you see him again?—Oh yes, frequently.

Lord Tenterden.—What day did you return him the paper?

Mr. Serjeant Bosanquet.—Look at this letter (*handing one to the witness*) and say if you received it from him.—Yes.

That is a letter acknowledging the receipt of it. Is that his hand-writing?—Yes; it is the 24th of March.

Letter

Court of King's Bench.
—
Rev. E. Back.

Letter read, dated "32, Walbrook, 24th of March 1827," *signed* "G. H. Gibbons," *and addressed to* "Colonel Edwards or Dr. Back."

"Sir:—I received your letter enclosing Mr. Back's certificate, and "which I was in hope of carrying into effect ere this; but it unfortunately "arrived a day too late, as what I anticipated when I saw you had been "disposed of the day before I received yours. However, I have no "doubt of being able, in the course of about a fortnight, of being in a "situation to fulfil your wishes, having made an engagement to that "effect. I think I can procure one in the Cavalry, but not less than nine "hundred guineas will be taken (indeed there is a good deal more asking "for one), if your friend should wish it, and probably from his age it *might* "*be* more desirable, and you are to recollect it is double the infantry pay. I "am unfortunately called to Falmouth, where I am going this evening to "see my wife, who lies dangerously ill and with little hopes of recovery. "I shall be absent about ten days, and will communicate with you on my "return, and you may consider the business as completely arranged; that "the young gentleman will be ready to come to town immediately that I "apply to you. Should the cavalry be preferred, it would be desirable "that you should drop me a line to that effect, that I might make the "necessary arrangements."

Did you see him again the 12th of April?—Yes.

Where were you in the mean time? in the country?—Yes, I had returned into the country again.

Upon the 12th of April did any thing take place? (*A paper was handed to the witness.*) You met Gibbons again?—Yes.

Did any thing take place on that day?—Yes.

What?—I gave him a £500 bank-note; and he cut it, and retained one half and I kept the other.

From whom did you receive that?—From the Solicitor of the East-India Company.

Which you gave to Gibbons?—Yes.

And he cut it in two?—Yes.

Did he retain one half and you the other?—Yes.

Did he give you that receipt?—Yes.

In his hand-writing?—Yes, he wrote it in my presence.

Put it in.—*The same was handed in and read, as follows:*

"Received, the 12th of April 1827, of ~~Col. Edwards~~ Dr. Back, the half of a five "hundred pounds Bank of England note, which I engage to return in "case the appointment agreed upon does not take place.—G. H. Gibbons."

Court of King's Bench.

Rev. E. Back.

Whose alteration is that?—Gibbons' himself.

In the evening of that day did Mr. Gibbons introduce you to any other person?— No, not on that day.

How soon afterwards?—The day following was Good Friday, and we did not meet on that day. On the 14th of April I met Mr. Gibbons and Mr. Tyndale.

Was that the first time you met?—Yes, I think that was the first day I saw Mr. Tyndale.

Soon after this deposit of the half of the £500, you met Mr. Tyndale?—The afternoon of the same day I saw Mr. Gibbons, and he shewed me an acknowledgment from Mr. Tyndale that he had received the half of the note.

Mr. Tyndale was not present?—No.

Mr. Gibbons shewed you that?—Yes.

And on the evening of the 14th you met them together?—Yes, I met them both together.

Did Mr. Gibbons introduce you?—Yes. He said nothing could be done on that day, as there were no Directors at the India-House.

Was it said in Tyndale's presence that there were no Directors at the India-House, and it could not be done that day?—Yes, he was present.

Had you conversation with Mr. Tyndale as well as with Mr. Gibbons?—Yes.

Who said there were no Directors at the India-House?—Either Mr. Gibbons or Mr. Tyndale, or both.

But they were both present?—Yes, and they said we must wait till Monday.

Had you any further conversation with Mr. Gibbons or Mr. Tyndale?—Yes, on the Monday; and then it was said it was the Easter Holidays, and nothing could be done till Wednesday.

Did you meet him more than once?—Yes, frequently, several times.

Lord Tenterden.—Both of them?—Yes.

Mr. Serjeant Bosanquet.—Was any reason assigned for the delay?—Yes, excuses were made; various excuses. One was, they said, that the fact was the uncertain state of the Ministry, as the appointment, it was supposed, would come from the President of the Board of Control.

Did you afterwards pay any further sum to Mr. Gibbons?—Yes, I did some time afterwards.

What day was it? Look at that receipt *(handing another paper to the witness)*. Yes, this is a receipt to me for the half of a £300 note.

The same was handed in.

Lord Tenterden.—You saw Mr. Gibbons again on that day?—Yes.

And

And gave him the half of a £300 note?—Yes.

Was Mr. Tyndale with him then?—No, certainly not.

It was cut in half?—Yes.

Mr. Serjeant Bosanquet.—The letter I have now will probably precede the receipt, because it was in consequence of it the payment was made.

Lord Tenterden.—Very well.

Mr. Serjeant Bosanquet.—Is that Mr. Gibbons' hand-writing (*handing another note to witness*).—Yes.

Was it in consequence of that the money was paid?—Yes, it was.

The same was handed in, and read as follows: dated "Four o'clock, 24th April, 1827," *addressed to*

"Colonel Edwards."

"Mr. Gibbons' compliments to Colonel Edwards, and acquaints him the "appointment can take place to-morrow; but the party stipulated for a "further lodgment of the half of £300 prior to proceeding. This being "the customary mode, and as the business will now be brought to a close, "he can see no objection; he therefore requests a meeting to-morrow "morning at Lloyd's, at a quarter before eleven o'clock."

Receipt read, as follows:

"Memorandum, 25th April, 1827.—I have this day received from Dr. "Back the half of a three hundred pounds Bank of England note, which I "engage to return, in case the object for which it is lodged is not accom-"plished this day.—G. H. Gibbons."

On that day, the 25th, when the half of the £300 note had been deposited and a receipt taken, did Gibbons introduce you to any other of the defendants? —Yes, he did, on the same day.

Who did he introduce you to?—To Captain Despard.

Where was it, where did you see Captain Despard?—At Lloyd's Coffee-house.

Be so good as to state what passed with him?—Captain Despard lamented he had not been consulted sooner in the business: if he had, I should not have been detained so long in town, he told me.

What else?—He would soon settle it. He left me then at Lloyd's Coffee-house with Gibbons, and went away, and they promised to return in about a quarter of an hour. I waited for him between four and five hours, but he did not come.

How soon did you see him again?—Not that day at all. Captain Despard returned.

I am speaking of him.—I thought you meant Gibbons.

Lord

Court of King's Bench.

Rev. E. Back.

Lord Tenterden.—You said, Captain Despard went away and promised to return in a quarter of an hour?—No, Mr. Gibbons.

Then Mr. Gibbons left Captain Despard with you?—No, they both went away together, I think.

Mr. Serjeant Bosanquet.—Did you see Captain Despard again that day?—Yes, he returned, and asked me if I had seen Mr. Gibbons since he left.

Was any appointment made for a further meeting?—Yes; but I must observe, first of all, that when Captain Despard came in and asked me if Mr. Gibbons had returned, and I said no, he expressed great astonishment at it; but the waiter told me he had seen Captain Despard with Mr. Gibbons that very moment.

There was an appointment for the next day?—Yes.

Did you see him?—Yes.

Lord Tenterden.—Did the waiter say that in the presence of the defendant?—No.

Mr. Serjeant Bosanquet.—You must not say any thing that did not pass in the presence of one of the defendants. You appointed to meet the next day?—Yes.

Did you meet accordingly?—Yes.

Did you meet Captain Despard and Mr. Gibbons, or which of them?—I think only Captain Despard: and he told me I should not be disappointed again; that he would introduce me to two very respectable merchants, as respectable merchants as any in London.

Lord Tenterden.—When did he say that?—The 26th.

Mr. Serjeant Bosanquet.—Did he introduce you to any body?—Yes.

Where did you go?—He took me to Great St. Helen's, and introduced me to Captain Anstice and Mr. Stubbs.

Mr. Stubbs is not one of the defendants.

Mr. Starkie.—I see you look at that paper every time before you give an answer. Have you any recollection without that paper?—It is so much connected with dates.

When did you make them?—The same day, day after day.

Mr. Serjeant Bosanquet.—You saw Captain Anstice at the office?—Yes.

You were introduced by Colonel Despard?—Yes.

Did Captain Anstice say any thing?—He said he had had the half of a £500 note in his possession for some time.

Did he say any thing further?—But that it was of no manner of use until the half of a £300 was also deposited.

What

What did you say to that?—I did not give it to him. I had not got it with me.

Lord Tenterden.—You had given one-half?—Yes, Mr. Gibbons had it in his possession.

Mr. Serjeant Bosanquet.—Was the observation of Captain Anstice addressed to the first half or the second half?—To the first half; that it was to be deposited in the same way.

Lord Tenterden.—I have it so: "I have had the half of the £500 some time."

Mr. Serjeant Bosanquet.—Did Captain Despard say any thing about that appointment?—Yes. He said that Captain Anstice had got most of Mr. Astell's appointments. It was supposed to be one of Mr. Astell's appointments; that he believed it would come from Mr. Astell; that Captain Anstice had got most of Mr. Astell's appointments.

Lord Tenterden.—Was that said in the presence of Captain Anstice?—No. It was said to me alone, I think, as we were walking in the Court.

Mr. Serjeant Bosanquet.—It was not said in Captain Anstice's presence?—No.

He gave you to understand that this was to be one of Mr. Astell's appointments?—Yes.

Did you attend again?—Yes, the next day, the 27th.

At Captain Anstice's office?—I believe it was at his office, and other places. We were running about from one place to another.

Lord Tenterden.—Who were "we"?—Captain Despard and me.

Mr. Serjeant Bosanquet.—Do you know whether either of the defendants said any thing upon that day—not any other person; but whether either of the defendants, either Captain Despard, Captain Anstice, or Mr. Gibbons?—I saw Captain Despard. He called upon me at the Monument Coffee-house, and said every thing would be completed the next day.

Did you go to the India-House with them?—No, I do not think I did, that day.

Or the next day?—The 27th, I think it was.

Lord Tenterden.—That is the day you say he called upon you at the Monument Coffee-house, and said every thing would be completed the next day?—I was waiting at Captain Anstice's office in very great anxiety, and expressed my doubt of the ability of the parties to procure the appointment.

To whom did you express that?—To whoever was there. It was at Captain Anstice's office. To Captain Despard or Captain Anstice.

Lord

Court of King's Bench. — Rev. E. Back.

Lord Tenterden.—That was said either to him or Captain Despard?—Yes, certainly.

Mr. Serjeant Bosanquet.—Was any thing further said as to whom the appointment was to come from?—Captain Anstice said he would be bound to forfeit £100 if it was not completed the next morning; and if I would leave my son with him, if I wanted to go out of town, he would take care of him.

Lord Tenterden.—He knew now who you were; he said, "if you would leave your son?"—He said "the young gentleman."

Lord Tenterden.—He did not call him "your son?"—No.

Mr. Serjeant Bosanquet.—Did you ever disclose, up to the time the papers were ultimately stopped, that you were the principal; that you were Dr. Back?—No.

You kept the name of Colonel Edwards to the last?—Yes, exactly so.

Was the name of any person mentioned in the course of that day by any of the defendants from whom the appointment was to come, or from whom it was not to come. You mentioned the name of one Director before?—He said that the appointment would be forwarded to the house of the Director who was to give it, who was in Hertfordshire.

Who said that?—Captain Anstice told me that; and that the Director had declined signing it until the half of a £300 note was in Captain Anstice's possession.

You have mentioned the name of one Director: was any thing said about the appointment, whether it would come from him or not?—He said he had forwarded the appointment, by post, to this Director, who was in Hertfordshire, and he expected it to be returned by post, or perhaps he might come up to town and bring it with him himself. He said that the gentleman who was to give the appointment had been tired of waiting (that was for the £300), and he had expressed himself in very angry terms at the delay, and said he would wait no longer. That Captain Anstice said.

Who said that?—It must have been Captain Anstice himself. It passed at his office.

I do not wish you to say any thing you are not certain of.—It was Captain Anstice.

What did he say?—He said he had two or three days since returned the half of the £500 to Mr. Tyndale, from whom he had it, saying it was of no use unless the half of the £300 accompanied it.

I am asking this question: Was any thing further said about whom the appointment was to come from, or who it was not? You have mentioned the name

name of one Director: did that continue, or was any thing said about it?—No, there is no other Director's name mentioned, that I see, at present.

Was the name of any other Director mentioned at all?—No, I do not recollect that there was.

On Saturday the 28th?

Lord Tenterden.—The 28th?

Mr. Serjeant Bosanquet.—Yes, that is the material day. Did you see Captain Despard on the 28th?—I was waiting all day at Captain Anstice's office, in expectation of seeing Mr. Andrews, who had promised to be there.

Who first said that Mr. Andrews was to be there?—It must have been Captain Anstice.

Are you able to say who it was?—No.

On the 28th, did you see Captain Despard there?—No, I do not think I saw Captain Despard there that day.

Lord Tenterden.—Did you see Captain Anstice that day?—Yes.

Mr Serjeant Bosanquet.—Look at your notes of what passed Saturday the 28th.—Captain Anstice went with me to find out Mr. Andrews.

Before that time did you see any body else; did you see Captain Despard before that time?—Not on that day, that I observe.

Captain Anstice and you went together, where?—To the office of Mr. Andrews, in Waterloo-place.

What took place there? Was he at home?—No, he was not at his office.

Did you wait?—A long time.

Did you see him?—Captain Anstice said, I had great reason to complain, that I was ill-used.

You did not see Mr. Andrews that day?—No.

You went with Captain Anstice to see Mr. Andrews that day, but you did not see him?—Yes.

That was Saturday?—Yes.

On the next day, the 29th, did you see him?—Yes.

That was Sunday?—Yes; I saw him on Sunday, the 29th.

Where did you see him?—At his own house.

Where is that?—Brook-street, Grosvenor-square.

Did you see Mr. Gibbons in the course of that day?—Yes.

Where?—At Captain Anstice's house in St. John's Wood Road; and Mr. Gibbons was talking to Captain Anstice at the door of his house.

Court of King's Bench.

Rev. E. Back.

That is his private house?—Yes.

Did Captain Anstice make any remark upon Mr. Gibbons being there?—Yes.

What was it?—He said that Mr. Gibbons wanted to go with us to Mr. Andrews, and he would not allow it.

Did you go to Mr. Andrews without Gibbons?—Yes.

And with Captain Anstice?—Yes.

Was it to his house in Brook-street?—Yes.

When you got there did you see Mr. Andrews?—Yes.

Did he say any thing about the appointment?—Yes. He said the appointment was certain, and that the gentleman who was to give it would be in town the next day.

Did he say any thing about the papers?—He said he would bring the appointment with him to Great St. Helen's by two o'clock the following day.

Lord Tenterden.—That is Captain Anstice's office?—Yes.

Mr. Serjeant Bosanquet.—Did he say any thing about the papers, where they had been?—He said he was sorry that we had missed one another the day before; that we had not met. That he wished to settle the business as much as I did: that the money would be very useful to his client at that particular time.

Did you learn any thing from him about the cadet papers, where they were or had been?—No. He said I must be very secret, and let nothing of the business transpire to any one.

Did you learn from Mr. Andrews whether the papers had been to the India-House?—No. He was to bring the appointment the next day, at two o'clock, to Great St. Helen's.

At two o'clock did you go there the next day?—Yes, I went there according to appointment.

That was Monday?—Yes, Monday the 30th.

Whom did you meet there?—I waited till four o'clock, and Mr. Andrews did not come.

Did you see him at all?—Yes.

When did you see him?—Some time that afternoon, it must have been. I waited till four clock. At last he came, and said that his friend, who was to give that appointment, would be with him that evening; and if Captain Anstice could call upon him in the afternoon, in his way home to St. John's Wood Road, the hour of meeting to-morrow (that was the following day) should be fixed on.

On the next day did you go to Captain Anstice's again?

Lord

Lord Tenterden.—Now we have got to the first of May?

Mr. Serjeant Bosanquet.—Yes, that would be the first of May.

Yes, I went to Captain Anstice's by appointment.

Mr. Serjeant Bosanquet.—I beg your Lordship's pardon. There was a note received the 30th of April: it is in the order of time; just look at that note. Did you receive that note from Mr. Gibbons the 30th April?—Yes, I recollect it perfectly.

Court of King's Bench.

Rev. E. Back.

The same was handed in and read, as follows: signed "G. H. Gibbons."

"Monument Coffee-House, 30th April 1827; half past four.—Sir: I "am quite in the dark as to what is going on. I went to Mr. Anstice's "at three o'clock, being told you were to be there at that time, but did not "meet you, and after waiting half an hour, was told you had been and "gone. I was desirous of knowing what was likely to be done, as I am "keeping an infantry appointment open, and the party complains of my "not giving an answer. I shall expect to see you in the morning, and will "call here about eleven."

On the 1st of May did you go to Captain Anstice's office?—I did.

Did you see Mr. Andrews there, and was any thing done respecting this appointment on that day?—Yes. There was a note arrived at Captain Anstice's office from Mr. Andrews, which was opened.

In your presence?—Yes.

Was Captain Anstice there?—No, it was his partner, Mr. Stubbs, who opened the note. Captain Anstice happened to be out.

Do you know Mr. Andrews' hand-writing?—No, I cannot say that I do.

In consequence of any thing that passed in the course of that day, the 1st of May, did you go any where the following day, the 2d.—Yes.

Look at that. Is that Captain Anstice's writing? (*Handing a paper to the witness.*)

Lord Tenterden.—He said the note came from Mr. Andrews?—This is not the note that came: this is from Captain Anstice.

Mr. Serjeant Bosanquet.—Do you know Captain Anstice's hand-writing? —No. I know that is the note I received.

Who gave it you?—I do not know; it was brought by a messenger.

Lord Tenterden.—What day did you receive the last?—I do not know the date.

Court of King's Bench.

Mr. R. Thornhill.

Mr. ROBERT THORNHILL sworn.

Examined by Mr. Serjeant Bosanquet.

Do you know Captain Anstice's hand-writing?—Yes.

Just look at that note (*handing a paper to the witness*). Is that his hand-writing?—Yes, it is.

The same was handed in and read, as follows, signed "J. P. Anstice, Tuesday evening, 8, Waterloo Place;" addressed to "Colonel Edwards."

"Sir:—My friend sends a messenger in with this to-night, purposely "to let you know that Mr. Back must be at this place by ten o'clock to-"morrow morning. Have the goodness to let him come by himself, if you "please, as no third party will be seen by the gentleman, who will take him "immediately and get all done. I must take the liberty of calling your "attention to the necessity of this being observed; and I will further "add, that if any delay or disappointment takes place now, it will be en-"tirely owing to a want of confidence, and that, on our parts, you will "find all to be correct.

Rev. E. Back.

The Rev. EDWARD BACK, D.D., called again.

Examined by Mr. Serjeant Bosanquet.

Is 8, Waterloo Place, Mr. Andrews' Office?—Yes.

On the following day, that is the 2d of May, did you go to the Monument Coffee-house?—I was staying at the Monument Coffee-house.

You were there?—Yes.

Did you there meet Mr. Andrews?—My son went down to his office as he was desired.

You sent your son to Mr. Andrews' office in consequence of that letter?—Yes.

And at the Monument Coffee-house did you afterwards see Mr. Andrews and any other of the defendants?—Yes.

Which did you see?—Mr. Andrews and Mr. Sutton called. They said that every thing was then completed, and we must go to the India-House.

Lord Tenterden.—The same date?—Yes, both; and that, as every thing was now completed, I must pay over the other two halves of the notes. That I refused to do until the young man had actually passed. They continued to press for the other halves of the notes.

Was

Was that at the Monument Coffee-house, or did you go to other places?—On our walk to the India-House they pressed for it.

Did you go into any other coffee-house?—We went into another coffee-house opposite the India-House, called the Ship. I returned to the Ship, and said I would give them the other two halves of the notes, and I laid them upon the table.

Lord Tenterden.—You said you returned?—Yes. I had gone away for a little time, to consider whether I would give them the other halves.

Did they go into the Ship without you?—Yes: they appointed to meet me there. Then a new difficulty was started, as the corresponding halves of these two notes were not forthcoming.

Lord Tenterden.—Who started that?—Either Mr. Sutton or Mr. Andrews, I do not recollect which; and Mr. Gibbons had told me, some days before, that those halves of the notes were in the possession of Captain Anstice, the two first halves. Then there was a sort of dispute arose upon the subject between Sutton and Andrews, and I was desired to walk to the other end of the coffee-room, which I did, until they had settled it; but before I did that I had taken up the half of the £500 note.

Mr. Serjeant Bosanquet.—You had laid them upon the table?—I had laid them both down upon the table; and before I walked to the other end of the coffee-room, I had taken up the half of the £500 again.

Leaving the second half of the £300?—Yes, I had taken up the half of the £500, and I declared positively I would not give it up till the young man had been sworn in.

Where was your son at this time?—I think he was waiting under the India-House. He was walking about waiting.

Did you find him there when you left the Ship?—We all went to the India-House together.

Lord Tenterden.—Did he meet you at the Monument Coffee-house?

Mr Serjeant Bosanquet.—What became of the other half?—It was taken up by one of the other gentlemen: I think Captain Anstice.

Did you then receive the papers?—Yes, they were then put into my hands.

Lord Tenterden.—By one of them?—Yes, either Mr. Andrews or Captain Anstice.

Mr. Serjeant Bosanquet.—What did you do then?—I then went with my son to the Cadet-office in the India-House.

Lord Tenterden.—You went to him?—He was waiting under the door of the India-House.

Did you go and find him?—Yes, I did.

And

Court of King's Bench.

Rev. E: Back.

And went to the Cadet-office?—Yes.

Mr. Serjeant Bosanquet.—Did you see Mr. Gibbons there?—Yes.

Lord Tenterden.—Were Mr. Andrews and Sutton with you?—No, I left them at the Ship.

Mr. Serjeant Bosanquet.—You went with your son into the Cadet-office and found Mr. Gibbons there?—Yes. He was either in the office or at the door; but he went into the office with me, and staid a long while there.

Did any thing pass between you and Mr. Gibbons?—Yes; but not yet. I gave the appointment to a clerk in the Cadet-office, who immediately disappeared with it. He went out of the room, and I waited till six o'clock and he never returned.

While you were there did Mr. Gibbons say any thing?—Yes.

Lord Tenterden.—While the clerk was gone?—Yes.

What did he say?—He attached himself very closely to me all the time, and I could not conceive what he wanted; and at last I said to him, I shall not wait any longer then, and I should conceive he need not either. He asked me where could see me the next morning. I asked him what he wanted. He said he wanted to receive the difference. As I had got this appointment for £800 instead of nine hundred guineas, he wanted to receive the difference between the £800 and nine hundred guineas, being £145: of which he was to receive £45, and pay Mr. Wright £100. That was all he was to have for his trouble, he added. His words were, "that is all I get by it."

Mr. Serjeant Bosanquet.—Did you return to the Ship?—I returned to the Ship two or three times in the course of the morning. I left the India-House two or three times and went into the Ship.

Did you, at any of those times, find Sutton or Mr. Andrews there?—Yes, one or the other; and sometimes both, and sometimes one. I know one was out.

Did any thing pass with them, or either of them: did they say any thing, or did you observe any thing?—When I went, I was detained so long at the Cadet-office they began to be apprehensive there was something wrong.

Lord Tenterden.—Did they say so?—Yes.

Mr. Serjeant Bosanquet.—Tell us what they said?—They could not tell what to make of it: there was something wrong in the business, and there was something irregular, they were afraid. Before we parted, Sutton walked with me into the street behind the India-House (I forgot the name of the street) or on the side of the India-house, and he said he hoped there was no irregularity; but if the matter was found out he should be a ruined man, and lose his friend for ever.

Lord

Lord Tenterden.—Did he say he should be a ruined man, or lose his friend, or both?—Both.

Mr. Serjeant Bosanquet.—Any thing further?—I appointed to meet Sutton the next day, to tell him what turn things had taken.

Did you go?—No, I was sent for to the India-House by the Directors.

Did you afterwards see Mr. Sutton at Little Hampton?—Yes, I did.

Lord Tenterden.—He came to you?—Yes, he did.

Mr. Serjeant Bosanquet.—What passed there?—Nothing particular. He begged particularly to know what I said when I was before the Directors. I told him I had not been before the Directors. He asked me what I meant to do. I said, I had nothing to say to him upon the subject: I declined all conversation.

Are you acquainted with Mr. Prescott?—No, certainly not: I never saw him in my life, that I know of, to my knowledge.

What was your son's age in March last year?—Between twenty-two and twenty-three.

Lord Tenterden.—That would be true, if he wanted one day of twenty-three.

Mr. Gurney.—That will appear by the baptism.

Lord Tenterden.—That will be read presently.

Mr. Serjeant Bosanquet.—Was he baptized on or about the day he was born?—I think the very same day. I baptized him myself. I believe it was the same day.

What day in October?—About the middle: I forget the very day.

Lord Tenterden.—Do you remember the year?—In the year 1805.

Mr Gurney.—October 1805.—Mr. Starkie will be here in a moment.

Lord Tenterden.—He appears for Captain Despard?

Mr. Gurney.—Yes, my Lord.

Mr. Brougham.—Mr. Starkie appears for Captain Despard, and my learned friend and I for Mr. Prescott only.

Cross-examined by Mr. Starkie.

I think I have heard you called, since the cause began, Dr. Back?—Yes.

Are you a Doctor in Divinity?—Yes.

Have you, on other occasions than this, gone in the name of Edwards?—No.

Only this special occasion?—Yes.

This was when you went to negociate for the office?—Yes.

What is your Colonel's dress, Dr. Back: how did you usually dress when you went

Court of King's Bench.

went as Colonel?—Black. I might have a black silk handkerchief. I had been abroad a good many years, and had been in the habit of wearing a black silk handkerchief.

Rev. E. Back.

Were you not in the habit of wearing a military dress?—No, just as I am.

You did not wear an undress military coat and yellow waistcoat?—Yes, on the Continent I have.

When you passed as Colonel Edwards did you never wear an undress military coat?—No.

Positively?—Yes. I have worn a blue camlet cloak; but I do not believe either of the defendants ever saw me in it: merely to keep out the rain.

And to pass as Colonel?—By no means.

Was not that blue cloak such a one as military men generally use?—Yes; but I never called on them with it: I merely had it in town.

You have not had it with you when you passed yourself off as Colonel Edwards?—No.

And, in all respects, except a black handkerchief, you dress in black as a clergyman?—Yes.

When you passed yourself off as Colonel Edwards, you had some of his cards?—Yes.

Who was he?—He was the husband of my present wife.

How long have you been married to your present wife?—Since 1819.

Her first husband was Colonel Edwards?—Yes.

Will you be pleased to state how it happened, so long after this gentleman's death, you happened to have these cards in your pocket?—It did not happen: I took them for the purpose. I had a hundred of them or more, then. I do not know that I have them now.

Were those the Colonel's cards, or have you had some printed since?—No, his own cards.

Those you had carefully preserved?—They were preserved. I found them in an old box or drawer, or some such thing.

Have you ever gone by the name of Colonel Drake?—No, never.

Upon no occasion?—No.

What name did you go by on the Continent?—My own name, certainly; never any other.

Were you ordained before you went to the Continent?—Yes, some years.

Had you any preferment here before you went?—No. I was chaplain to a foreign garrison.

Where

Court of King's Bench.

Rev. E. Back.

Where did you reside during the twelve or fourteen years you were abroad? —I resided at Brussels: part of the time at Valenciennes in France, but principally at Brussels. I have lived also at Ostend.

Had you any employment at those places?—No, none whatever. If you call it employment, I was tutor to a son of the Duke of Richmond at Brussels, Lord Frederick Lennox. I do not know whether you call that employment.

When was that?—I think in the year 1817.

How long were you tutor to him?—Very nearly twelve months, till he went abroad with his father to Canada.

I think you said you made this application in August 1826?—Yes.

In consequence of an advertisement in the Herald?—Yes.

How long was that negociation carried on, you assuming the name of Colonel Edwards, before you made any communication upon the subject to the East-India Company?—It is necessary for me to look at the paper. I see it first of all began in August 1826, and I renewed it in February 1827.

Up to that time, and indeed down to the last time you have been speaking of, you went by the name of Colonel Edwards?—While I was negociating that business.

Was it February 1827 you communicated with the East-India Company?—Yes.

Lord Tenterden.—It is so in proof already.

Mr. Starkie.—Was it by a letter?—Yes. I wrote to Sir George Robinson, the then Chairman.

Were all the communications you had with the East-India Company upon this subject by letter?—Yes, all.

Lord Tenterden.—You saw the Solicitor occasionally?—Not before I had written to Sir George Robinson.

Afterwards?—Afterwards I had repeated interviews with him.

Mr. Starkie.—I think that you have said that these papers were written severally upon the days they bear date?—Yes.

Lord Tenterden.—Or are they a transcript of what you wrote at the time?—This is merely more particularly from my short memorandum, but they refer to that same date.

Mr. Starkie.—Have you got the originals there?

Lord Tenterden.—He says, most of them are originals.

Mr. Starkie.—Shew me which are the originals.—These *(handing papers to Mr. Starkie)*. This contains some of the same dates more particularly.

Look at the second sheet of that writing *(handing some papers back to the witness)*.

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witness). Do you mean to say that those entries, containing several different dates, were written at the time they bear date?—I do say so.

Look at the first sheet: was that written, also, at the time it bears date?—

Rev. E. Back.

Undoubtedly it was.

Not a transcript?—No, not a transcript from any thing else.

Written at the time it occurred?—Yes, at the time it occurred.

Will you look at the second sheet again. How happens it that the top paragraph, and the lower one on the other side, are scratched out?—I might have mistaken the day of the month, or something of that kind. There was no intention in it: there was nothing obliterated.

You say, it might have been a mistake of the day of the month or something of that kind. Look at those paragraphs marked out. Do you not see, that not only the day of the month but the whole paragraph is struck out?—Yes, it is.

Why was it struck out?—I can give no reason for it. It is not obliterated, any one may see it.

Has your son any other employment?—No.

Your son you represented as your ward?—Yes, as my friend.

You have got no other employment for him?—No, I have not.

Mr. Brougham.—I have no questions to ask him.

Mr. Serjeant Bosanquet.—I have no questions to ask on re-examination.

Mr. Starkie.—I should wish the Jury to see these papers.

Lord Tenterden.—You must ask him as to all of them, then.

Mr. Starkie.—Merely those two.

Lord Tenterden.—You may leave them there.

Col. Toone.

COLONEL SWENY TOONE sworn.

Examined by Mr. Gurney.

I believe you have been for many years a Director of the East-India Company?—I believe thirty years to-day.

The defendant, Mr. Prescott, has been for some years past a Director?—He was for some years past a Director, and I served with him seven years in the Direction, which made me acquainted with him.

I believe the Directors of the Company, in their turn, fill up the several appointments that are in their gift.—They do, and sometimes lend them to each other.

I am coming to that; if you will follow me I will endeavour to lead you the shortest road. Does it often take place that the Director, in whose turn the appointment

appointment is, lends it to another Director to receive it back again?—Yes, it constantly occurs.

In the latter end of April in the last year, did Mr. Prescott apply to you for an appointment in your gift?—Yes, Mr. Prescott did apply to me for an appointment in my gift. I think the latter end of April.

Do you recollect the day?—I do not wish to speak with certainty to the day. I think it was the 26th or 27th.

Is that the note in which Mr. Prescott applied to you? If you look at the back you will see your mark upon it.—Yes, that is the note I received from Mr. Prescott.

It was in an envelope?—Yes, the 26th.

The same was read, as follows: dated "April 26th, 1827;" *addressed to* "Colonel Toone."

> "My Dear Sir: Will you have the goodness to lend me a Madras or "Bengal Cavalry appointment, and I will repay you immediately I get "one.—I am, Dear Sir, your's very sincerely, C. ELTON PRESCOTT."

That means a Cadetship?—A Cavalry Cadetship.

Did you give an answer first in writing, or verbally?—I cannot so perfectly recollect. I think it was verbal. I think we met in the street, and I told him I had one, and I should be very happy to accommodate him, having great respect for him. I think it was in the street we met. It was either that, or by note, I cannot recollect which.

Mr. Gurney.—Your Lordship may take it to be Thursday the 26th. On the next day, Friday the 27th, were you in the Committee of Correspondence at the India House?—I dare say I was.

Mr. Gurney.—Your Lordship will allow me to take that for granted. I will shew it was. Did any thing particular occur as to a nomination that had before been given to a person of the name of Frederick?—Yes, there was a circumstance, but I do not recollect the name.

It was something relating to the appointment?—Yes.

In consequence of something that did occur, did you speak to Mr. Prescott respecting this promise?—Yes, after that, it certainly did occur to me.

Was it on that day?—Certainly not on that day: it must have been on the following morning, or the day after that.

What did you say to him?—I really cannot exactly recollect what it was; but I said there was something that happened in the Committee that made me very anxious about this Cadetship I had promised him; that I was extremely anxious on that account.

Did you inquire of him whether he knew the family of the Cadet?—I particularly desired him. I said, "You know this young gentleman perfectly well;"

Court of King's Bench.

Col. Toone.

well?" and he said, "Yes, he is one of the finest youths in England." That I perfectly recollect.

Did he tell you what he knew of his father and his family?—"And you "know his family?"—"Yes, I know his father; he is a respectable clergyman "in Devonshire."

Did he tell you the young man's age?—He told me it was necessary to quicken the matter: that the young gentleman was within two months of being of age, and at the termination of those two months he could not be appointed.

After the age of twenty-two they cannot be appointed?—No.

Did Mr. Prescott say any thing more to you that you remember?—I have not the least recollection of any thing more being said.

Do you remember saying what was passing in your mind.

Mr. Brougham.—Really that is not a question.

Mr. Gurney.—It is only touching the string.

Mr. Brougham.—That is a new phrase.

Lord Tenterden.—Mr. Gurney asked him, whether any thing was passing in his mind?

Mr. Gurney.—Whether any thing was said about what was passing in his mind?—Upon my expressing those kind of doubts, he said it was caused, he supposed, by a young gentleman that had passed at the India-House about three or four years before. As that has nothing to do with the question, you will permit me to say it has nothing to do with the question; and it was in consequence of that he said he knew this young gentleman very well, and his father was a clergyman in Devonshire.

Did you, upon that, write a note to Mr. Abington, the clerk in the Cadet-office? (*Handing a paper to the witness.*)—It is my note.

That note you sent to Mr. Abington, the chief clerk in the office?—Yes, I think I did. It is my note, completely.

Lord Tenterden.—After this conversation?—Yes.

Mr. Gurney.—Read it.

Mr. Brougham.—How is this made evidence? Colonel Toone sending a letter to a clerk in the office, does not entitle you to read it.

Mr. Gurney.—I undertake to go on to show it was received by Mr. Abington, and that there were communications to Mr. Prescott afterwards.

Mr. Brougham.—If you will do that, that is another thing.

Mr. Gurney.—It is part of the *res gesta;* it is part of the transaction.

Lord Tenterden.—Mr. Abington is chief clerk?—At the head of the Cadet-office.

Lord Tenterden.—It is part of thetransaction.

The

Court of King's Bench.

Col. Toone.

The same was read; dated "Saturday, the 28th April 1827;" *signed by* "S. Toone;" *addressed to* "William Abington, Esq."

"Wm. Abington, Esq.—Be so good to pass Captain Prescott's youth "without delay, as he is near 22, and I will sign the papers on Wednesday "morning next; but let the youth pass as soon as possible.—Your's, "&c., S. TOONE.—If the papers are sent to me this day I will sign "them."

Mr. Gurney.—That was Saturday.

Lord Tenterden.—Yes.

Mr. Abbott.—It is dated Saturday.

Mr. Gurney.—On that Saturday, when you were at home, did you receive a packet purporting to come from Mr. Abington?—Yes, from the head of the Cadet-office.

Where do you live?—Mortimer Street, Cavendish Square.

Did the packet you received from Mr. Abington enclose those two papers (*handing two papers to the witness*)?

Lord Tenterden.—Did it come from Mr. Abington?

Mr. Gurney.—It came from Mr. Sharp, in Mr. Abington's office: we will shew that. Did those papers come in that packet, and did you sign them?—Yes, most certainly they did, on that day.

And you signed them?—I signed the latter paper.

Mr. Gurney.—They are marked as A and B.

Lord Tenterden.—The one marked A is signed by the witness.

Mr. Gurney.—One is, "I do hereby declare."

Lord Tenterden.—Look at the originals.

Col. Toone.—They are both signed by my signature.

Mr. Gurney.—Having signed them, did you enclose them and seal them up?—I enclosed them to Mr. Abington, who sent them to me, and put my seal upon them, and directed them to Mr. Abington at the India-House, that moment.

That same evening?—The same day.

The messenger waited while you did it?—Yes. One of the India-House messengers came with it, and he waited whilst I sealed them up and directed them to Mr. Abington.

After you had sent them off, did any thing that occurred in your mind induce you to send a note to Mr. Abington?—Most certainly I did. I was called from my dinner, and signed the paper suddenly: something did occur to my mind afterwards.

Is that the note you sent to Mr. Abington (*handing a paper to the witness*)?—Certainly it is my note sent to Mr. Abington.

Lord

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Col. Toone. *Lord Tenterden.*—How did you send it?—That note by the two-penny post, and another by my servant.

Did you at the same time send a note by your servant to Mr. Prescott?—Yes, the same evening I sent a note to Mr. Prescott.

Mr. Gurney.—I call for that note.

Mr. Brougham.—We have not got it, or you should have it. We never had it.

Mr. Gurney.—Do you remember the terms of your note to Mr. Prescott?—I recollect saying I had received the papers from Mr. Abington.

Mr. Brougham.—You had better prove the delivery of it first.

Mr. Gurney.—If you please, the servant is here.

JOSEPH WILLIAMS sworn,

Examined by Mr. Gurney.

J. Williams. Are you servant to Colonel Toone?—Yes.

Do you remember, about April last year, being sent with a letter by him to Captain Prescott's?—Perfectly well.

Did you take it to Captain Prescott's house?—I did.

To whom did you give it?—To a female servant. I knocked at the door, and gave it to her.

Did you ever take any other letter from Colonel Toone to Captain Prescott?—No.

Mr. Brougham.—About this letter I know nothing, except that Mr. Prescott says he never saw it.

COLONEL SWENY TOONE called again.

Cross-examined by Mr. Brougham.

Col. Toone. You say that you gave him a verbal answer; did you not also, having received that application in writing, write a letter?

Lord Tenterden.—What has this to do with it?

Mr. Brougham.—Does not your Lordship see that there was only one letter, and that may be the letter? He says he wrote one.

Lord Tenterden.—The witness left it rather doubtfully as to the first communication.

Mr. Brougham.—We have the letter.

Lord Tenterden.—How did the letter go?—I answered the letter.

How did you send it to him?—I think it very likely, by one of the India-House messengers.

Are

Are you not sure you did not send it by your servant?—I do not recollect sending more than one by my servant. Court of King's Bench.

Are you sure you did not send more than one? I think it must have been by an India-House messenger. We were upon very friendly terms. *Col. Toone.*

Mr. Gurney (*to Williams*)—What day did you take the letter?—On Saturday, the 28th of April. *J. Williams.*

What time of the day?—In the afternoon part.

Was that after dinner?—Yes. My master wrote the letter before he dined, and I went afterwards, and it was in broad daylight.

Lord Tenterden.—You were saying that you wrote an answer to Mr. Prescott, stating that you had received the papers from Mr. Abington: now go on. *Col. Toone.*

Colonel Toone.—And that I had signed the papers. But it occurred to me that I had not seen the young man, contrary to my practice, and that I had written to Mr. Abington (for I concluded the papers had gone to Mr. Abington) to state that I had signed the papers he had sent to me, but that it was my positive orders that the Cadet should not be presented to pass till I saw him. That was my positive orders, and I sent my servant with them again the next morning, too.

Mr. Gurney.—Now read that letter to Mr. Abington, if you please.—*The same was read: dated,* "Mortimer Street, Saturday evening, *signed* "S. Toone," *and addressed to,* "Wm. Abington, Esq."

"Dear Sir:—I signed the papers you sent me this evening; but before "the matter is finally concluded I request you will contrive to let me see "the youth: and, with that view, I will call at the India-House on "Monday next, and I will attend there before 12 o'clock, and tell the "youth to attend at 12 on Monday next."

Did you, on Monday morning, send another letter to Mr. Abington?—Am I to assign my reason for sending the second; I had sent the first by the two-penny post, and I was afraid it might miscarry, as they sometimes do.

Did you send another?—Yes, by my servant.

The same was handed in and read: dated "Monday morning, the 30th April," *from* "S. Toone" *to* "William Abington, Esq. or his Deputy in his absence."

"Dear Sir:—The young gentleman nominated to my Madras Cavalry "nomination, for which I returned the papers yesterday, is not to be "presented to be passed until Mr. Toone has seen him; and, with that "view, Mr. Toone will attend at Mr. Abington's office as soon as possible."

Did you, on that Monday morning, go to Mr. Abington's office at the East-India House?—Yes. I think I was there exactly at the time I appointed, ten o'clock in the morning.

Lord Tenterden.—Twelve is the time appointed.

Mr.

Court of King's Bench.

Col. Toone.

Mr. Gurney.—At the time you had appointed in your letter?—Yes.

Did the Cadet make his appearance?—I never saw him, and never have seen him. I remained at the office two hours, and he did not arrive.

Did you receive any answer from Mr. Prescott to that letter you sent him on Saturday evening?—I never received any acknowledgment of it.

Do you remember having had any other conversation with Mr. Prescott respecting the cadetship than you have mentioned?—I do not think I had. I had the fullest confidence in Mr. Prescott, and did not enter fully into it. I had the greatest regard for him.

Mr. Prescott did not give you any answer to that letter, either by a letter or calling upon you?—Never. I had never any answer from him.

Did any thing more come to your knowledge upon the subject until the matter came before the Directors, on Wednesday the 2d of May?—Unless what I may have now stated may be considered as part of it, the precautions I took to prevent the thing passing.

When you attended two hours and found the young man did not come, did you give any directions?—Yes, positive directions that he should not be passed on any account whatever, as he had not been presented.

That he should not pass at all, or not till something was done?—That he should not pass till I had seen him.

You did not know of any orders that the Chairman or Deputy-Chairman had given?—No, I knew nothing about it; I was quite ignorant of it.

Cross-examined by Mr. Brougham.

When Captain Prescott made the application to you, did not you say there was no man in England, Scotland, or Ireland, you would more readily oblige than Captain Prescott?—I really believe I said those words: that was what I felt at the time.

Lord Tenterden.—It is the same thing he said just now: "I had the fullest confidence in him."

Mr. Brougham.—I am now coming to the last letter you have spoken of to Mr. Abington to stop the appointment. The first letter you sent to Mr. Abington was by the Twopenny-post?—Yes, late onSaturdaye vening.

You believed, of course, he put it into the Twopenny-post on the Saturday evening?—I doubted it very much. The Twopenny-post letters had constantly miscarried, and I sent my own servant with the second on Monday morning, that he might be there by nine o'clock.

But when you wrote the letter to go on Saturday, did you not give it to your servant to put into the Twopenny-post that evening?—Yes; it was not eight o'clock.

But

But you will find they were not put in till Monday morning.

Mr. Gurney.—They are not marked till Monday morning when they are put in late. Court of King's Bench.

Lord Tenterden.—It is the time of delivery; it is the time at which you ought to receive them. *Col. Toone.*

Mr. Brougham.—It means the eight o'clock delivery.

Mr. Gurney.—They do not mark them on the same night.

Lord Tenterden.—It is the time you are to receive them.

Col. Toone.—I sent it before six o'clock in the evening.

Lord Tenterden.—You do not get them so soon as they are marked.

Mr. Brougham.—No, there is always a little friction in the machine of the delivery. Do you not know that the presentment of the appointment never was made to the Committee?—I do believe it never was. I never heard that it was; I have no reason to believe that it was.

It may either be, as I understand, presented to the Directors at their usual meeting on the Wednesday, or to the Committee that meet daily?—Certainly, any other day: any day but Saturday.

I do not ask you to the particulars at all; but there was a good deal of inquiry among the Directors respecting the whole of this matter?—A very considerable inquiry.

There are dinners held of the Directors from time to time?—Yes; but not on Monday, on court days.

I suppose you did not attend any dinner at which Captain Prescott was after that inquiry had been made?—I really had been indisposed, and I do not believe I had attended any dinners for two or three months.

You were very right. Were not you present at a Court of Directors that was held after that inquiry: you were present?—I certainly did attend there: it was my duty. I did attend.

The Committee that had made inquiry had made a report to the Directors before that meeting?—Yes, I perfectly recollect it.

After that report had been made, do you recollect at a meeting of the Directors and prosecutors, one of them putting a question and receiving an answer, that none of the Directors were implicated?

Mr. Gurney.—I object to that.

Mr. Brougham.—I have not finished.

Mr. Gurney.—It had reached far enough to be objectionable.

Mr. Brougham.—I have one of the prosecutors in the box.

Court of King's Bench. — Col. Toone.

Lord Tenterden.—You may ask him.

Mr. Brougham.—That he, being one of them, was present, and heard the question put and the answer given, and made no objection.

Lord Tenterden.—Yes, as far as regards himself.

Mr. Brougham.—Yes, I cannot ask it in any other way.—Did you not hear Mr. Mills put that question, and the answer given by the Chairman?

Mr. Gurney.—I object to this. He was not a member of the Committee of Inquiry.

Lord Tenterden.—You cannot tell what motives might influence persons in putting questions and giving answers.

Mr. Brougham.—Then I will not press it.—Something had occurred with respect to a gentleman of the name of Frederick, of which you say you knew nothing whatever that implicated Captain Prescott in it?—I did not say that.

Mr. Brougham.—Mr. Gurney said so.

Mr. Gurney.—I told you we did not mean to suggest any thing from that.

Mr. Brougham.—Had it any thing to do with any sale or traffic of any appointment?—Nothing of any sale or traffic.

Is not Colonel Frederick first cousin to Captain Prescott?—I do not know.

Mr. Gurney.—He is no colonel.

Mr. E. D. Back.

Mr. EDWARD DRAKE BACK sworn.

Examined by Mr. Carter.

I believe you are the son of Dr. Back, the gentleman who has been here?—I am.

Do you recollect being with your father in town, the latter end of April and the beginning of May, 1827?—I do.

Do you recollect going, the morning of the 22d of May, to No. 8, Waterloo Place?—I do.

Mr. Andrews's?—Yes.

Did you see Mr. Andrews there?—I believe I did.

Any other person but him?—I believe I saw Mr. Sutton.

Some person there besides?—Yes.

Be so good as to look at these papers *(handing some to the witness)*, and say whether you saw those papers there, and who produced them to you?—I did see those papers there.

Look

Court of King's Bench.

Mr. E. D. Back.

Look at both of them.—Yes.

Who produced them to you, Sutton or Mr. Andrews?—It was a gentleman I did not know.

One of those two?—Yes, it was.

Look at this gentleman, sitting on the floor, and say whether that is the one *(pointing to Mr. Sutton)*?—Yes, I believe it is.

Mr. Gurney.—That is Mr. Sutton.

Mr. Carter.—Upon the papers being produced, did either of those persons direct you to do any thing to them?—They directed me to fill up what was necessary.

Were there any marks in pencil in places where you were to write?—Yes.

Lord Tenterden.—Those are the papers, A and B?

Mr. Carter.—Yes, A and B.

Just look at this paper. Look at Question 4, was that one?—Yes.

Did you fill up the answer to Question 4? Turn over.—I did.

Were those words, "Charles Elton Prescott," written in pencil for you to write in ink?—Yes.

Lord Tenterden.—You wrote the words "Charles Elton Prescott?"—Yes, I did.

It was all in pencil?—Yes, it was.

Mr. Carter.—Had you, before that time, heard the name of Captain Prescott, or did you know him?—No, never.

Just look at the second paper. Did you sign your name to that?

Lord Tenterden.—He signs his name to the other.

Mr. Carter.—After the end of Question 8, was that your signature?—Yes, it was.

Now look at paper B: "Edward Drake Back," is that your signature?—Oh yes, certainly.

Signed at the same time and place?—Yes.

Having signed the papers, did you leave them with the two persons that were there?—Yes, I did.

Did either of them then say any thing to you, directing you what to do?—Nothing more than I was to fill up the papers.

After you had filled them up?—No. They merely said I was to go to the Monument Coffee-house, and they would be there almost as soon as I was.

Did you return to the Monument Coffee-house?—Yes.

Court of King's Bench.

Mr. E. D. Back.

And afterwards waited about the India-House for your father?—I did.

Did you afterwards go into the India-House, into the Cadet-Office, with your father?—I did.

Did any body there, a servant of the House, desire you to go into any room to see a gentleman?—I do not know whether it was a servant; but some person desired me to go in, and said I was to go in to be introduced to Captain Prescott.

Did you go in to see the gentleman?—I did.

Do you see Captain Prescott here, the gentleman you saw upon that occasion?—I saw him for so very little time I cannot say. I did not see him long enough to have any recollection of his face again.

Did any body introduce you at the time you went in, or named the person you were to see?—I believe one of the waiters did.

What did he say when he introduced you?—Mr. Back.

That was the person desirous of your going in to see Captain Prescott?—Yes.

Did that person ask you any questions?—That one that desired me to go in?

No, the one you saw when you went in.—He merely asked me my age.

Did you tell him?—Yes, and he asked me if I liked to go where I was going, and if I had ever been in the army.

Was that all he asked you?—Yes, all.

Had you, to your knowledge, ever seen that person before?—Never.

Cross-examined by Mr. Pollock.

Allow me to see the papers you signed?—(*They were handed to Mr. Pollock.*)

You know nothing about the arrangement your father has spoken of to day?—Very little.

Do you know any thing. I took it for granted you did not?—I merely knew that the business was going on for the purpose of detecting those people, and that was all I knew.

You knew that, as far as you were concerned, this was not real?—Certainly.

And, in answer to the question, "Do you believe that any person has received, "or is to receive, any pecuniary consideration, or any thing convertible in any "mode into a pecuniary benefit on account of your nomination?" you put "Certainly not"?—Yes.

When were they put!—What?

Lord Tenterden.—The answers to the different queries.

Mr. Pollock.—That is your answer, "certainly not?"—Yes, certainly, that is my writing.

When

Court of King's Bench.

Mr. E. D. Back.

When did you write that "certainly not?"—Upon my word I hardly know. If you will have the goodness to let me look at it again. (*The paper was again handed to the Witness.*)

Mr. Gurney.—The fourth cannot be filled up till the Director is known.

Witness.—I wrote it at Little Hampton.

Mr. Pollock.—Where?—I do not know where.

Mr. Solicitor General.—Look at the date.

Mr. Gurney.—There is no date.

Lord Tenterden.—Is that very material?

Mr. Pollock.—No, perhaps not.

Lord Tenterden.— He says this was going on to detect these people.

Mr Pollock.—On Wednesday you were at the India-House?—I believe so.

You believe?—Yes, I took no notes of any thing.

You are not certain of the day?—No.

You understood you had been sent for in order that you might be seen?—Yes.

Re-examined by Mr Carter.

I understand you went to the India-House with your father, the same day you went to Waterloo Place and signed the papers?—Yes.

Mr. FREDERICK HALDANE sworn.

Mr. F. Haldane.

Examined by Mr. Solicitor General.

I believe you are a clerk in the India-House?—Yes.

In what particular department?—The Cadet-office.

Do you recollect Mr. Prescott applying to you upon any occasion in the month of April 1827?—Yes.

What day was it, in the first place, you are about to speak to?—I cannot exactly recollect the day: it was between Thursday and Saturday.

What did he apply to you for?—He sent for me from the office to receive instructions from him, and put into my hand a letter.

Did you go to his room?—Yes, I went to his room.

Did he put into your hand a letter?—Yes.

What did he say at the time?—He merely asked me if I understood it.

What is become of that letter?—I gave the letter to Colonel Toone.

Lord Tenterden.—Colonel Toone did not speak of the loss of any letter.

Mr.

Court of King's Bench. — *Mr. Haldane.*

Mr. Solicitor-General.—He was asked whether he had written a letter to the same effect as the conversation he had had. He said he was not quite certain.

Lord Tenterden.—A letter by the two-penny post.

Mr. Gurney.—No, in answer to the first application that was made: that part about England, Scotland, and Ireland.

Mr. Solicitor General.—In consequence of that, what did you do with the letter?—I took it to the office, and deposited it in the case where it is usual to deposit such letters.

Lord Tenterden.—At the Cadet-office?—Yes.

Mr. Solicitor General.—Did he tell you at all precisely what you were to do? —No, merely to write it off.

What is the meaning of that phrase at the India-House?—To mark it in the Cadet Book.

Mark what?—Mark off the appointment.

Lord Tenterden.—I do not know what that means. I suppose it means that Colonel Toone's appointment was filled up.

Mr. Gurney.—It is marking the exchange.

Mr. Solicitor-General.—What do you mean by that. Did you do so?—Yes.

(Mr. Abington produced a book which was handed to the Witness.)

Mr. Solicitor-General.—Can you explain it?—This is not the book.

You wrote it off?—Yes.

What did it shew when you had written it off?—The nomination was put to the Director to whom it was transferred.

Did it purport that this was a transfer from Colonel Toone to Mr. Prescott?—Yes.

Did you, on the following day see Colonel Toone at your office or afterwards? —I cannot say it was the following day.

What day in the week was it?—I saw him on the Monday following.

Do you recollect whether you saw him on the Saturday?—I think I did see him on Saturday.

Did he come to your office?—Yes.

What did he come for: what did he say?—He lamented the circumstance of having lent Mr. Prescott the nomination; but directed that the gentleman was not to pass until he saw him.

Was that the Monday?—I think it was the Monday he came.

Lord Tenterden.—What day did he tell you that?—He told it me on the Monday.

Lord

Court of King's Bench.

Mr. Haldane.

Lord Tenterden.—So I thought.

Mr. Solicitor General.—Do you remember the papers being brought into your office on the second of May?—Yes.

What did you do with them?—I took them immediately from the office and gave them into the hands of the Deputy Secretary.

That was Mr. Auber?—Yes.

Had you received any directions from Mr. Auber to that effect?—Yes.

(Some papers were handed to the witness). Are those the papers?—Yes.

Is that the hand-writing of Mr. Prescott? Look at the recommendatory letter.—It is signed by Mr. Prescott.

Does his name occur elsewhere?—No.

Mr. EDWARD SHARP sworn. *Mr. Sharp.*

Examined by Mr. Serjeant Bosanquet.

Are you a clerk in the Cadet Office at the India-House?—Yes.

In consequence of any message, did you attend on Mr. Prescott, the Director, on the 28th of April, in his room?—I did

Did he produce to you any papers?—He produced a note from Colonel Toone.

Intimating a compliance with his wish to give an appointment?—Yes, and for the papers to be sent up to Colonel Toone for his signature.

Did he also produce the paper A?—Yes, this is the one that Captain Prescott produced to me.

What did he say upon the subject of that paper when he produced it?—He asked me if the paper was complete.

What did you say?—I said they were not complete.

Did you state in what respect they were not complete?—I said that the first part was not completed; the letter of recommendation was not complete.

In what respect was it incomplete?—It was not filled up.

In what other respect was the paper not complete?—The fourth question not answered.

Were the other parts filled up?—Yes, the other parts were filled up.

What further was said upon that: did you inform him how they ought to be filled up?—He first asked me—If you will excuse me for half a minute.

Recollect yourself.—Captain Prescott asked me in what way the first letter should be filled in.

The

Court of King's Bench.

Mr. Sharp.

The letter of recommendation?—Yes. I answered, that if Colonel Toone signed the nomination, Captain Prescott ought to sign the first letter of recommendation.

Did he make any observation upon that?—Captain Prescott said, "is not that irregular?" I answered that it was; but that since Colonel Toone was to sign the nomination, it was necessary for Mr. Prescott to sign it, as I presumed Colonel Toone knew nothing of the other parties. I also filled in the fourth question, by the desire of Captain Prescott, as a Cadet, for a guide, in pencil.

Lord Tenterden.—Did Captain Prescott then sign the letter?—Yes.

Mr. Serjeant Bosanquet.—The letter was filled up and he signed it, and the question filled in by his dictation?—Captain Prescott asked me to fill it in in a proper way.

Was there any other mode suggested, or any other papers lying by?—I recommended Captain Prescott to allow me to write a note to Colonel Toone, saying in what way the papers ought to be signed.

What answer did he make to that?—Captain Prescott desired me to fill up the nomination, and to send it to Colonel Toone for his signature.

You say you recommended a note to be sent to Colonel Toone, saying that Captain Prescott ought to fill up the nomination?—Yes.

What did he say in answer to that?—He said, in consequence of the note he had received from Colonel Toone, he would not give him any further trouble, but desired me to fill up the nomination and send it to Colonel Toone for signature.

If Captain Prescott had signed the nomination himself, and the recommendation had been signed by the person to whom it was given, would that have given Colonel Toone any additional trouble?—No, it would not: it was only transferring it to Captain Prescott.

In that case, would it not have been less trouble?

Mr. Pollock.—No, that is not a proper question.

Mr. Serjeant Bosanquet.—What would Colonel Toone have had to have done with the papers in that case?—He would have had nothing to do with them.

You say, you promised to write to Colonel Toone?—Yes.

Were you desired to do so?—No.

What was it that would have given Colonel Toone trouble if the papers had been in any different form to what they are now?—If they had been in a different form, they would have been in a form that Captain Prescott would have had to sign them.

Would that have given Colonel Toone none?—None.

Did

Did you prepare any draft of a note to be sent to Colonel Toone?—Not upon that subject.

Did you prepare any draft of a note and shew it to Captain Prescott after the papers were signed?—After I had filled up the nomination, Captain Prescott desired me to write a note transmitting them to Colonel Toone.

Did you do so accordingly?—I wrote a note in Captain Prescott's name to Colonel Toone, and I took it to Captain Prescott for his approval.

Did he approve of it or make any observation?—Captain Prescott desired me not to write it in his name, but to write it in Mr. Abington's name.

Is Mr. Abington the principal clerk?

Lord Tenterden.—That is proved.

Mr. Serjeant Bosanquet.—Was Mr. Abington present on that day?—No, he was not.

Was he absent from illness?—He was there the Monday following.

Lord Tenterden.—He was not there that day?—No.

Mr. Serjeant Bosanquet.—Did you accordingly prepare a note in Mr. Abington's name?—Yes.

And enclosed those two papers?—Yes, for Colonel Toone's signature.

To whom did you deliver the packet?—To the commodore of the house, named John Salter.

Lord Tenterden.—Is that the commodore of the messengers?—Yes

That means the principal one?—There are two of them.

Mr. Serjeant Bosanquet.—Did Captain Prescott give you any directions you were to give the messenger?—Captain Prescott desired me to give it to the commodore, to take it to Colonel Toone's house; and the messenger was to wait at Colonel Toone's for his answer, and then to take it on to Captain Prescott's residence.

Was there any intimation given in the packet sent to Colonel Toone, that the papers came from Captain Prescott, or were to be carried to Captain Prescott's house?—The only thing where Captain Prescott's name was mentioned in the note was, that by the desire of Captain Prescott they were transmitted to him, but in the name of Mr. Abington.

Was there any intimation where they were to go afterwards?—None.

Just look at those two other papers, which bear date, I believe, February 1827, and see if Captain Prescott's writing is to either of those papers (*two papers were handed to the witness*).

Mr. Brougham.—It is his hand-writing, no doubt.

Lord Tenterden.—My note must state it is proved.

Mr.

Court of King's Bench.

Mr. Sharp.

Mr. Brougham.—We admit it.

Lord Tenterden.—He has proved the recommendation was signed by Captain Prescott.

Mr. Serjeant Bonsanquet.—The Solicitor General opened that there was a preceding appointment, upon the recommendation of Sutton, given by Captain Prescott in the February preceding, which might afford a reason why Sutton's name was kept out of view.

Lord Tenterden.—Have those papers got Captain Prescott's signature?—I have every reason to believe it is Captain Prescott's signature.

Lord Tenterden.—Have you seen him write?—Yes.

Mr. Brougham.—We admit the appointment was made the February preceding.

Lord Tenterden.—But unless something is read or said, I do not know it.

Mr. Brougham.—We wish to save the papers being read. We admit the appointment was made in the February preceding, upon Captain Prescott's nomination.

Lord Tenterden. —I was quite sure you would not admit it in the way they wish it. Read the papers.

Mr. Serjeant Bosanquet.—Is that an exchanged appointment?—Yes.

And Captain Prescott signs it?—Yes, the nomination.

And the recommendation is signed by whom?—Sutton.

Lord Tenterden.—What is the date of it?—The 16th February 1827.

Cross-examined by Mr. Brougham.

Have you looked at the filling up of the former appointment: the February appointment?—Yes.

In whose hand is the filling up?—Mr. Abington's.

Now attend to me. I understand Mr. Abington is the chief of your department?—Yes.

You are next in the office to him?—No, Mr. Haldane.

You are in office under him?—Yes.

He was then ill?—Yes.

When Captain Prescott said, he did not like to give Colonel Toone any further trouble in the matter, was not that in answer to an observation of yours, that you had better write to Colonel Toone to know in what way the appointment should be made out?—I did.

Lord Tenterden.—That is no answer to the question, it is nothing like it.

Mr. Brougham.—Was not Captain Prescott's observation, that he did not like

like to give Colonel Toone any more trouble in the matter, made by him in answer to a proposal made by you, to write to Colonel Toone to know of him in what way the appointment should be filled up?—It was.

To save him the trouble of writing the letter?—Yes.

Re-examined by Mr. Serjeant Bosanquet.

Did I understand your proposal was not to write to Colonel Toone to ask him how the appointment was to be made out, but to state that it ought to be made out in a different way?—I proposed to write to Colonel Toone, informing him that Captain Prescott ought to sign the nomination, as it was an exchange or a loan.

Lord Tenterden.—What did you mean by saying just now, that Captain Prescott's observation was in answer to your proposal to write to Colonel Toone, to know how it should be done? Did you write to know that, or did you write stating how it was done?—May I have the question put again?

Lord Tenterden.—It has been put three times.—I proposed to Mr. Prescott to write to Mr. Toone, to say that if Captain Prescott was to sign the nomination, the proper exchange would be made upon the face of it.

Lord Tenterden.—It is better to strike it out. Here are three different answers.

Mr. Brougham.—This gentleman is not very clear, but they may not be so inconsistent as they appear. Did you not also say, when you said " I will write " to Colonel Toone and say how it should be done," did you not add, " and " ask him, if you had signed the right way?"—I might have added that, but I am not certain about it.

And his answer was, " it will be giving Colonel Toone more trouble?"—Yes.

Lord Tenterden.—The better way is to consider it not as evidence.

Mr. Brougham.—Your Lordship sees that it is.

Lord Tenterden.—When a witness gives me three different accounts, I cannot say I see any thing.

Mr. Brougham.—They all agree in one point, your Lordship sees.

Lord Tenterden.—I see nothing. The witness does not adhere to any one answer. I shall strike it out.

Mr. Brougham.—He is not our witness. It must go to the credit of the witness.

Court of King's Bench.

J. Salter.

JOHN SALTER sworn.

Examined by Mr. Gurney.

Are you one of the commodores of the messengers at the India-House?—Yes.

Do you keep a book in which you enter letters you receive to take to any person?—Yes.

Turn to Saturday, the 28th April in the last year. Did you receive from Mr. Abington's office any letter to send to Colonel Toone?—Yes.

Did you receive such a letter?—Yes.

To whom did you deliver it to carry?—John Sullivan.

What directions did you give Sullivan?—To take it to Colonel Toone, in Mortimer Street.

What then: did you tell him what to do with the answer?—Yes, to wait an answer, and to take it on to Captain Prescott.

J. Sullivan.

JOHN SULLIVAN sworn.

Examined by Mr. Gurney.

Did you, on Saturday the 28th of April, receive a packet to take to Colonel Toone?—Yes.

Did you wait for an answer at Colonel Toone's?—Yes.

Where did you take the packet you received?—To Captain Prescott's house.

Did you leave it there?—Yes.

Was it a sealed packet?—I saw the maid-servant.

Was it a sealed packet?—Yes.

Who wasit addressed to?—William Abington, Esq.

In pursuance of the directions you received, you took it to Captain Prescott?—Yes.

Mr. Abington.

WILLIAM ABINGTON, Esq. sworn.

Examined by Mr. Gurney.

You are the chief clerk in the cadet office?—Yes.

On Saturday, the 28th of April, you were absent from indisposition?—I was.

Were you at the office on Monday, Tuesday, and Wednesday after that?—I was.

Did

Court of King's Bench.

Mr. Aington.

Did you, on either of those days, see Captain Prescott?—I did.

Do you remember the day?—I cannot take upon myself to swear which day; whether it was Monday; but I am certain it was Tuesday, the day previous to the court day.

You believe it was Tuesday?—Yes.

Did Captain Prescott say any thing to you respecting those cadet papers?—Yes.

What did he say to you?—He came into the office, and said he understood he had signed a wrong paper.

What more did he say, or did he say any thing more?—Am I to state what I said?

State all that he said and all you said.—My reply was, "I am aware of that. "You had no occasion to sign the recommendatory letter; that Colonel "Toone had nothing to do with it, having transfered it to him." He desired me to stop the papers as soon as they came to the office, and not to pass the young man, or suffer him to be passed, until Colonel Toone had seen him.

Did any thing more pass?—On the following day?

Have you given me all that passed between Captain Prescott and you?—Yes, that day.

The next day?—The next day, the Wednesday, I saw Captain Prescott again. He asked me if the young man had attended at the office to be passed. My answer was, "no, he had not." His answer was, "mind you let me "have the papers. Stop the papers as soon as they arrive: do not suffer the "young man to be passed till Colonel Toone has seen him."

Did any thing more pass?—Not with Captain Prescott; excepting that a message was sent into my office while Captain Prescott was in the Committee, to know if the papers had arrived.

Was that an inquiry from Mr. Auber?—No, I understood from Captain Prescott.

Lord Tenterden.—You were not in your office when the young man arrived?—Yes, I was there.

Mr Gurney.—Did you see him?—No, I did not see him.

You did not know of his coming?—No, I did not myself.

The

Court of King's Bench.

Rt. Hon. C. W. W. Wynn.

The Right Honourable CHARLES WATKIN WILLIAMS WYNN sworn.

Examined by Mr. Solicitor General.

I believe you were President of the Board of Control in the month of April 1827?—I was.

The only question I have to ask of you is, whether you know any thing of the parties or the subject in discussion to-day?—Certainly, nothing whatever. I was never in the company of Captain Prescott or the other defendants. I had no acquaintance with them.

Mr. Brougham.—I have no questions to ask.

Mr. Astell.

WILLIAM ASTELL, Esq., M.P., sworn.

Examined by Mr. Solicitor General.

You are one of the Directors of the East-India Company?—I am.

Are you acquainted with any of the parties to this indictment except Captain Prescott?—I believe I never heard the name, and never saw the name, of any one of the parties; my honourable friend, the Director, always excepted.

Do you know any thing of the subject?—Nothing more than I have heard here, and what I have heard in the Court of Directors, of which I was a member.

Previous to the 4th of May, did you know any thing of the parties?—Nothing whatever.

Cross-examined by Mr. Brougham.

You have known Captain Prescott?—Yes.

How long have you known him?—Twenty years or more, for what I know.

After having been in the Company's sea service, he has been a Director eight years?—He has.

What is the character and reputation of your colleague, Captain Prescott?—I can only speak from my own opinion.

I ask you according to your knowledge, what character he has borne?—

Lord Tenterden.—In what way is he spoken of?—I have always considered him a respectable man.

Lord Tenterden.—Have you not sense enough to distinguish between your opinion and the reputation of the person?—Certainly.

Then attend to the question.

Mr. Brougham.—I want to know the character and reputation the gentleman has

has borne.—I would appeal to my Lord. I can only speak to my own knowledge.

Lord Tenterden.—You may know in what way you have heard him spoken of.—As far as I have any knowledge, he has always been spoken of as a very respectable and honourable man.

Mr. Brougham.—You were not Chairman or Deputy Chairman at the time the prosecution was ordered?—No.

Was Mr. Pattison in one or the other of the Chairs?—I believe he was Deputy Chairman.

He is now?—Yes.

And he was elected last April?—Yes, as Deputy Chairman. I do not understand the question.

We are told, the Directors being on friendly terms with each other, confiding in each others power and wish to repay, borrow patronage and appointments from each other?—Yes.

Do you not know that Mr. Pattison, in November last, borrowed an appointment from Captain Prescott, or applied to him?

Mr. Gurney.—Is that last November?

Mr. Brougham.—Yes.

Lord Tenterden.—It is a fact, but it cannot be evidence.—I do not know the fact.

Mr. Brougham—Is Mr. Pattison in town?—He was in town yesterday.

Is he here?—I do not know that he is.

Mr. Gurney.—We will now read the paper A, the recommendatory letter.

The same was read as follows:

" Gentlemen:—I do hereby declare, upon my honour, that I received a " nomination for the Madras Cavalry from Sweny Toone, Esq. gratui- " tously, and that I have given it gratuitously to Mr. Edward Drake Back, " with whose family and connexions I am well acquainted.—I am, Gen- " tlemen, your most obedient servant, C. Elton Prescott."—*Addressed* " To the Honourable Court of Directors of the United East-India Com- " pany."

Mr. Gurney.—Now Question 4.

The same was read as follows:

" Who recommended you to Sweny Toone, Esq., the nominating Di- " rector, for this appointment?—*Answer.* Charles Elton Prescott, Esq.

Lord Tenterden.—Is that your case?

Mr. Solicitor-General.—Yes my Lord.

Mr.

Court of King's Bench.

Mr. Brougham.

Mr. BROUGHAM.

May it please your Lordship: Gentlemen of the Jury.—Really, Gentlemen, I am sure, in addressing you on behalf of this most respectable gentleman, Captain Prescott, for whom alone I am of counsel here to-day, it would be a most absurd, not to say ridiculous, at all events an unseemly affectation in me, to pretend that I feel any of that anxiety and depression, or even those feelings of weight so as to be oppressed by them, which are very often the lot of Counsel when they are addressing a Jury, on behalf of a defendant stricken well in years and of a most eminent station in society; arrived, after a long course of exertion and of perils, to the very height of his profession and of his ambition too; who has borne an uniformly fair and spotless reputation, in the discharge of many duties where much was left to his own discretion, during the earlier part of his life, and of duties still more delicate, and besetting his path with still more hazard and temptations, during the last eight years of his life. I mean, while he had the disposal of his ample share of the magnificent patronage which those twenty-four fellow-subjects of ours, the Directors of the East-India Company, enjoy. A person in circumstances, for the first time, suspected, or affected to be suspected, and put upon his trial for the purpose of clearing his character, never before questioned, ordinarily lays his Counsel under the pressure of very considerable anxiety for the event of such a case confided to his hands. But I say here, to-day, I cannot affect for a moment to feel, for the purpose, as it were, of adorning the exordium of the very short address that I am called upon to make to you, I cannot affect to feel the least concern for this gentleman's character or for his fate. That character, and that fate, are committed, almost nominally and for form's sake, to my defence at this moment; but committed to your care substantially, if indeed there is any evidence brought to impeach it. I ought rather to say, the evidence which I have to thank the East-India Company, the prosecutors of the indictment, for an opportunity of having heard, and for the power of meeting; as I have also, on the part of Captain Prescott, heartily to return my thanks, for the power and opportunity of meeting this charge in a public court of justice.

Gentlemen, I quite agree with the Solicitor-General, that the Directors of this

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Mr. Brougham.

this great trading Company, opulent, and still more powerful than wealthy; whose dominions are large and revenues ample, but whose power and patronage are still more precious than those of wealth or dominion: I quite agree with my honourable and learned friend, that a Company intrusted with that power, and above all, entrusted with that so dangerous to human virtue, that immense patronage, though individuals and not ministers of state, that they could do no otherwise than they have done: first inquire, and by their inquiry sift the case; and then, whatever was the result of that investigation, because it was a private inquisition, bring that case before a jury of their country, that it might a second time undergo a more satisfactory, because a more public scrutiny and trial, before an English judge and an English jury. That they would, to the end of time, have laboured under a suspicion; that they would, for ever thenceforward, have been taunted to have made a compromise; that there would always have lurked among discontented, or malicious, or captious folk, a notion behind, that there had been something concealed which would not bear the light, though the individuals had pleaded guilty who were the real criminals in this instance; and though of that there could be no doubt, yet if they had let off without a trial, whatever might be their opinion, however satisfactory the private investigation had proved to them before, whatever had been their opinion on the result of it, some suspicion would have lurked and seemed to linger about their conduct, if, because the other defendant, Captain Prescott, who stood upon his defence, was one of their own colleagues, they had not brought his part of the charge to a full, strict, and satisfactory, because public scrutiny. I agree with my learned friend, the Solicitor-General, in this observation; and therefore it is, instead of complaining, I on the contrary rejoice, on the part of the defendant, that the matter was allowed to take this course: it is the only satisfactory course for me. On the other hand, I agree that the East-India Company, for their own sakes, as well as for their honourable colleague, Captain Prescott, could take no other course; because this is a public acquittal, and the former was only a private acquittal.

Now, Gentlemen, what is the evidence brought before you, upon which you are to judge of the gentleman's conduct? That a cadetcy was applied for in consequence of an advertisement. That a clergyman, who sometimes

passed

Court of King's Bench.

Mr. Brougham.

passed by the name of Colonel Edwards, but sometimes by that of the Reverend Dr. Back; that Dr. Back applied, in consequence of that advertisement in the name of M. N., and treated, and then broke off the negociation, in a way not to me, I own, very intelligible; because he said, he was astonished to find that M. N. meant to take a premium for the appointment. He says, "I thought he had only advertised from a mere benevolent motive of "letting somebody have a good appointment for the bare cost of the outfit, "and I was thunderstruck when I was told that M. N. was to receive money "beyond the sum required for the outfit;" that, after that, he thought better of it, and renewed the negociation, and again flew off, and went to the East-India House, and under the protection of the Chairman and Deputy Chairman, very properly was employed to sift to the bottom the whole of this which appeared suspicious at first, and turned out afterwards criminal. That he carried on the negociation in collusion (I speak it without offence), a necessary collusion, with the Company, with the money of the Company. That the Company, in order to inquire more into it, supplied the funds with which the Colonel, the Doctor, was to bribe Mr. Sutton or Mr. Andrews, in order that the crime might be completed, though they did not stand by and see the parties traffic and deal and commit the guilt of office-brokerage; but they assisted the party to accomplish that, which the individual having the will, had not the resources to accomplish himself. That this was done by the Chairman or Deputy Chairman, but with the purest and best object in view, whether with a very good judgment, or a very accurate view of their duty in the course of the administration of the criminal justice of the country, or with a view to the proper disposal of their funds to bribe one of their Directors, as it was supposed, though it turned out to be unfounded. I do not quarrel with that; I do not cavil at the zeal they shewed that the parties should be punished. But this turns out only to involve the Doctor and Mr. Andrews, and Mr. Sutton, and all those agents in this conspiracy. I ask you, is there a tittle of proof, is there a shadow of evidence, to implicate in the slightest degree the honourable and worthy gentleman who sits before me, their colleague, Captain Prescott? I ask of you, upon their evidence, upon their own shewing, I call upon you to look at their case, and I say that the Right Honourable Gentleman who sits by my Lord, who has denied, which he need

not

not have done, upon his oath; and also my honourable friend Mr. Astell, for a long while a Director and for some time Chairman of the Company, as honourable a man as any one I have the honour of knowing, who has also truly denied all knowledge of this transaction; you may as well suppose that their character was concerned, and more so, because Mr. Wynn's name, the President of the Board of Control, wa mentioned, and Mr. Astell's too. It was said that Mr. Anstice gets all Mr. Astell's patronage. Though he is committing this offence, he cites Mr. Astell as the person whose patronage he enjoys. But who believes it? Over whose mind has a shadow of suspicion passed, as to the conduct of the President of the Board of Control, or of Mr. Astell, the late Chairman and now Director of the Company? No more has been given against Captain Prescott, in other respects; but less in this respect, as Captain Prescott's name was never mentioned.

My learned friend, the Solicitor General, opened the case to you, that Mr. Sutton was the friend of Captain Prescott; that he had been engaged in electioneering contests for him in the India-House. That is not proved; but I will admit it to be so. A man has his friends in great canvasses, as we see, and which we see more and more of, and the great reason is the ample patronage which is placed in these sovereigns, (if I may so call them,) the twenty-four Directors. Our ears are fatigued with the constant canvass, the never-ending solicitations that are going on without end, sometimes without numbers, in the election of the office of Director, time after time, and a number of times, canvassing the proprietors and holders of India stock, canvassing all their relations and friends, and that during those canvasses there are committees;—that a committee will have its chairman, and that the chairman will be active:—he is generally an active and useful friend of the candidate; and that Sutton, as was opened by my learned friend for the prosecution, being such a canvassing friend, I do not deny. It may be so; it is what all of them do. That being a friend, he rendered essential service to Captain Prescott; and for that he was so grateful, that he gave him in one year two cadetcies. That is where the case begins and ends; and my learned friend says, I know no great difference whether a man sells for the lucre of gain his patronage, or gives it to an electioneering agent in the discharge of an obligation to him; it comes to the same thing, with the suspicion,

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my learned friend says, that he meant to sell it. With great submission to him, it comes to a very different thing. A man might well do the one thing without having a lurking suspicion, which I deny that there is any evidence of in the case; but, on the contrary, there is evidence that he never had his mind crossed by the suspicion. My learned friend said he had a knowledge. No, he never said that: he knew his case would not bear him out in that; but he had the means of knowledge, he had guilty means of knowledge, or the means of guilty knowledge. I may have the means of knowing a thing, and if, in a question of civil rights, I have shut my eyes voluntarily and have not taken pains to inform myself, the circumstance of my wilful ignorance, arising from my shutting my eyes, must come against my pocket, and I must pay damages. But it is new to me, and I think to his Lordship, who has had much more experience than I have in these matters, although mine is not of yesterday. I have had some experience upon subjects of this sort, but I never heard of a man being chargeable with a crime because he had the means of knowing: not that he knew it or suspected it; not that he was aware, and wilfully lent himself to a criminal act being done, but he had the means if he chose to use them. He might have sent Mr. Lawford, or another attorney, to sift people: he might have gone to Devonshire or Brussels after Dr. Back: because, having the means of knowledge, if he had used those means he would have discovered there was a traffic in his patronage; and if he did not make use of those means, he is guilty of knowing, because he might have known, and of conniving, because he might have prevented, and of participating and of abetting the other parties in their guilt, because he had the means of knowing, and if he had used those means he might have known, and if coming to the knowledge he continued to connive, just as he did when ignorant, then that connivance, owing to that knowledge through those means, would have amounted to abetting. That is the argument, that is the logical nature of the argument, and the fairness of the argument. I will shew he did not do that. The moment he comes to know it or suspect it, he says, "here is an irregularity here: I find there may be something wrong if I do "not look sharp and scrutinize the whole thing." But that is not the way. I urge that fact, and that last fact, came out, to the wonder of any man who had heard the case opened by my learned friend, or had heard the case tried

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at all, and had seen this gallant officer, this respectable East-India Director, a worthy and an honourable man, as his friends know him to be, put upon his trial for a corrupt (for it is corrupt, if at all) and wilful sufferance of his patronage being used by a set of swindlers, for aught I know, whom he knew nothing about, whose names he never heard, and of whom he knew no more than Dr. Back, whose name he never heard of at all till it was mentioned by Mr. Sutton. All this is found to be proved by the case laid before you by the evidence. One word upon which I am going to submit to you, if the attention you have already bestowed upon it, and the sagacity you bring to the sifting of it, renders one single comment upon that evidence needful.

Now observe, Gentlemen, Mr. Sutton was a neighbour: Mr. Sutton was an electioneering coadjutor, and associate and canvasser for this gentleman. Mr. Sutton asks him for a cadetcy, which he receives; and again asks him for a cadetcy, which is the one in question, which he never obtained, but was put in the way of obtaining. I call upon you attentively to observe that. Have you not the evidence of Dr. Back here, the remarkable evidence of Dr. Back, in this respect a witness of mine though a witness for the prosecution, that when he was walking about (and I do not wish to press hard upon the character of Dr. Back: he may be a respectable man for all that has appeared here; men are a little lax when they are anxious to provide for young men, when they have large families. I do not justify it: it is not harmless to society; but it is very different to persons selling offices and deriving a profit from the sale of offices, which should be kept sacred to the public)—but Dr. Back says, and nobody can doubt it, that when he was walking about, waiting for some steps of this negociation to be carried through, "while we "were walking near the India-House, in a street by the side of it, Sutton "said, he hoped we had not been found out: if we were, he was a ruined "man, and would lose his friend." Is that the speech of a man who had the least idea in his mind that his friend knew of it? Why, is it not self-evident, he was saying to Dr. Back, his associate in this traffic, "pray take care: I "hope to God we shall not be discovered; if we are, I shall lose my friend. "I have been trafficking with his patronage; I have been abusing, foully "abusing the confidence he reposed in me, and he knows nothing of it. He "still confides in me; he trusts me. I shall be ruined, and lose that friend,

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"the instant I am found out by him: I have abused his confidence heretofore, and am now doing it." That is my case. You have heard that plain and distinct admission, forming a part of the case for the prosecution against Captain Prescott, forming a part of the great transaction against Sutton, upon which the whole is built. A part of that is a declaration by Sutton, in a moment of alarm, that his friend knew nothing about it; and if he did he would be ruined, and his friend's eyes would be opened to his conduct.

Then it is said that Colonel Toone is a witness, to prove that my client, Captain Prescott, borrowed, in the usual way, a cadetcy from Colonel Toone, and filled it up irregularly, and wrote the recommendatory letter, or rather signed the recommendatory letter, and vouched for facts not within his own knowledge. And those are the only circumstances upon which this suspicion is attempted to be built, for the purpose of connecting Captain Prescott with the guilt of these parties. This will require no long observation: it is the only part that remains to be commented upon. I speak with great respect of Colonel Toone, with the greatest respect. He is an officer who has grown grey in the service of his country; who, by his own account, has been thirty years an East-India Director; who from the rank he has in the army, which, it is matter of common notoriety to all of us, a man never rises beyond after he comes home, save one step, it will not be disputed he must have come home a colonel, or at least a major, thirty years ago: and I think I assume very little when, without venturing to ask a question that might seem indelicate as to his age, I tell you he cannot possibly be (I am sorry for it; for a more venerable looking officer, or a more worthy or a more gallant man, I have never met with in a court of justice to all outward appearance, and I believe that is the character he universally bears), when I tell you he is near four score years of age: for a man will not be made a major or a colonel, and an East-India Director, on the bright side of fifty, and he has been thirty years in that eminent station.

If I was to say there was any thing confused in the evidence of this gentleman, or any thing in the slightest degree betokening a loss of memory, I should say what your experience of his evidence would contradict, and my own feeling upon the subject would flatly, and even loudly disavow; but when a man does not take a note at the time, which he did not, and when he did

did not suddenly afterwards have his memory refreshed and corrected, and directed to the particular facts and the materiality of words, which weigh much in such a case; when, at a distance of somewhat about a year, he is called upon to swear to those precise expressions, I must say that it does enter into my mind, that when, at the time he is called upon to swear, he is about fourscore, as far as regards the perfect accuracy and minute nicety and correctness of recollection of a fact, or rather a conversation, which lasted a minute or two altogether (for he told it in about a minute), that was holden a year ago, and of which it is not pretended he took down any note of what dropped in conversation, which happened recently, during the last year of his life, when in all probability he would more accurately recollect what had happened twenty years before, by a common rule of memory, only see upon what a narrow point, upon what a very evanescent pivot, if I may use the term, the case turns as it regards the evidence of Colonel Toone. A single pause, a comma, a particle, a change of a word, makes all the difference between nothing at all, and that upon which my learned friend alone, or almost alone, relies in this case. He first said, "you know this gentle-"man:" he afterwards corrected the expression and changed it. When my Lord asked him what was the question, or what elicited that answer, he changed the word: he at first said, "you know the gentleman;" but he afterwards said, "you are acquainted with the gentleman." May I be allowed to say, both my learned friend and myself observed it.

Lord Tenterden.—Yes, he said first, "I asked him, do you know the gentleman." That mode of asking a question prevails very often, and I hear it very often in this part of the country.

Mr. Brougham.—A man very often says, "do you know such a one?" Does any man believe that Captain Prescott would say, for the sake of his friend Mr. Sutton, that he would immediately begin to say to Colonel Toone, "Oh, acquainted with him, I know him of my own knowledge." That is what is meant to be said; not, "I know him through Mr. Sutton," but "of "my own knowledge I know him." Do you think Captain Prescott would say, "I know him perfectly well; he is one of the finest youths in England. "I know his father; he is a respectable clergyman in Devonshire." I have no doubt Captain Prescott said that. He was asked, I dare say, "Is he a

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"respectable man?" Yes, he is a respectable clergyman: he had been in Devonshire. My learned friend opened him as an eminent clergyman, and tutor to the Duke of Richmond's son; and notwithstanding all that has passed, he is a respectable man, and I know that his family is the family of a respectable clergyman in Devonshire, and it turns out that he is so. The word is used in that sense. I beg you to recollect that. Suppose he had said so, suppose he had said this, this would be no evidence to convict him of this foul and infamous offence. But I utterly deny that he said it, or that any man in his senses could have said it, without any one possible motive for so doing. But what he did say was, what he must have said, was the truth, that he knew him through his then friend, whom he then did not know, whom he now knows, whose authority he will take care of trusting to again, whom he will never allow any more to abuse his confidence; because, knowing him now, and being ignorant of him at the time, he believed what Mr. Sutton told him, as I should a man I had known much less of; people under much lighter obligations than my learned friend stated that Captain Prescott had been under to Mr. Sutton. Somebody must get his cadetcies. He is not allowed to traffic in them; is he to give them to friends or strangers? is he to give them to one to whom he lies under no obligation, lest he should come under the severity of my learned friend's observations, of a person who does not traffic in office for lucre or gain, but gives away offices as a reward for past services? Is he, under that strict and fantastical feeling of morality, to look out for people whom he does not know. He is to take the representations of others as to the individuals: upon that he is to act, and so he does.

Now, Gentlemen, see what follows, and this is the only other point; but the ground is cut from beneath the prosecutor's feet. I mean the last witness, Mr. Abington, who knows the mode in which the appointment was filled up. The usual way when I borrow of any one, suppose we were both Directors (I wish we were); when I borrow of you a cadetcy, I, and not you, nominally make the appointment; and when I repay it to you, you, and not I, make the appointment: and accordingly that was followed; and if that had been followed in this case, you would never have heard so much as you have. This was followed in the case of the February appointment, because that worthy officer of the Company, Mr. William Abington, the principal in that department,

department, who is clear and distinct in his manner (much more so than the deputy, Mr. Sharp), he knew how to fill it up, and the appointment is filled up in Mr. Abington's hand. He filled it up right, and sent it to the right person. It being a borrowed appointment, Captain Prescott signed the nomination, and Sutton signed the recommendatory letter.

But, Gentlemen, now comes the appointment in question. He had promised Mr. Sutton a cadetcy. He is told it presses; that the young man is within two months of being twenty-two. My learned friend said five months. He was of age in October, according to his father's account; and this happened in April: and, says my learned friend, he ought to have known it from the parish register when it came to be looked into, or he ought to have observed, by the appearance of the young man, whether he wanted two months or five. Here is another wilful and knowing misrepresentation. It turns out he wanted five months. He hurried the appointment. He goes to the India-House, and gets Sharp, the man whom you have seen to-day, so clear in his recollection and his manner of expressing himself, that he answered a question three different times three different ways. The gentleman comes to him and he says, "this is the way you ought to do;" but, says the Captain, "I do not think so. I think that is irregular; will not it be irregular?" Suppose Captain Prescott (and that is the supposition upon which the whole of the case is bottomed), suppose Captain Prescott was anxious to deviate from the regular and usual way; that instead of giving the nomination in his own name, and Sutton signing the recommendatory letter, he was desirous of giving it in Colonel Toone's name, what business had he to raise objections, when Sharp, without any knowledge on his part, happened, luckily for his purpose, to fall into the snare, and offered himself a willing assistant to this operation, to change the name, to keep back Sutton's name. That is the story, that it would look ugly, Sutton appearing twice, when Sharp had enabled him to accomplish it and to fill it up in this way, Colonel Toone giving the appointment, he signing the recommendatory letter. I do pray you to attend to this; for, in my mind, it is quite decisive upon the question. The whole question turns upon this, aye or no: did not Captain Prescott voluntarily sign a recommendation, stating in that recommendation what Mr. Sutton might know of his own knowledge, what Sutton might have

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told him upon his knowledge, but signing it as if he knew it himself. He did so, or did he not do so, is the question; for the purpose of keeping back Sutton's name from the India-House, and enabling Sutton to sell it. How could he possibly stand better in the execution of this purpose, than when Mr. Sharp comes and voluntarily throws himself into his hands as an agent for this purpose. "Fill up and nominate, and you sign the recommendatory letter." What is the answer of this honourable man, clearly shewing he did not harbour a thought of taking any such advantage, that he had no such scheme in view, and had no wish to step beyond the ordinary course of promotion, or to deviate a moment to favour Sutton, and make Colonel Toone sign, though himself recommended instead of Mr. Sutton? What does he do? He says, "will not it be "irregular?" to Sharp. He objects to Sharp's plan. He says, "this is "not the right plan: will it be regular or not?" That is said to be, according to the scope of my learned friend's argument, the very object. He makes all the difficulty and raises the objection: Sharp would never have dreamt of it. Sharp proposed it. He says, "will not it be irregular, "Sharp?" Sharp says, "Yes; but, upon the whole, I think you may "do it in this way, because Colonel Toone gives the appointment, and you "know something and Colonel Toone does not. Colonel Toone knows "nothing of the individual, and he must nominate, and you must sign the "letter." Then he proposes another thing: but about that there is so much obscurity that you cannot rely upon it; for you see that Sharp is the witness for the prosecution, whose want of clearness, if it remained in the case, must puzzle the prosecutor's case and not mine. Mr. Sharp's testimony, if it is fatal to my learned friend, must rend the fabric of the prosecution, and not the fabric of my case. Sharp, take him as a right witness or a wrong witness, as a clear witness or a confused, he says he proposed writing a letter to Colonel Toone. I do not say what follows: there is some doubt upon it; but it is clear he proposed writing the letter to Colonel Toone, to which Captain Prescott added, "I have put Colonel Toone to so much trouble I do "not wish to put him to any more." Then it is made out in an incorrect way, which Mr. Abington never would have done, which Mr. Abington in February did not do; but owing to Sharp's blunder, and Captain Prescott not wishing to give unnecessary trouble to Colonel Toone, it is made out in

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an irregular way, which leads to difficulty and delay. Now then, having come to this part of the case, the evidence of Colonel Toone and the evidence of Mr. Abington cuts down all the ground they had to stand upon. Colonel Toone got a little annoyed. Something occurs to him afterwards, and he writes a letter to Captain Prescott, which is given to Captain Prescott's servant, and the servant is not called to shew that Captain Prescott received it. I cannot call Captain Prescott to say he never received it. He has said, and now says, he never received it, and that is just as good as their saying they delivered it to the maid servant. But suppose he received that letter (I will make a present of that to them); what was it? It was a letter stating Colonel Toone was difficulted about the business, and desired nothing further to be done until the young man was seen and inquired about. What is my learned friend's charge? That we had the means of knowledge, that we were aware of the workings of his mind: and notwithstanding we were aware of his puzzle, and the anxiety, the workings, the doubts and suspicions which he never declared (he never said, "all is not right; take care, inquire, examine "your friend Sutton, whoever it is, he may have deceived you; sift the "matter, use your means of knowledge"); but because he said something that indicated he had a doubt about it, and because he wrote a letter desiring that the thing might be partially stopped, we are to be presumed guilty. How does the thing turn out? Colonel Toone writes to Mr. Abington to stop the appointment. He is afraid that that might not reach, and he sends a second letter. What does Mr. Abington say? that early in the week (he will not say whether Monday or Tuesday, but before Wednesday), he was certain Mr. Prescott himself said, "I desire that this appointment may "be stopped: let nothing further be done in it: on no account let the thing "go in to the Board; on no account let the young man pass until he is seen," by whom? "by Colonel Toone," himself being the very man that makes the objection; "by the person whose appointment I am giving away, and who is "putting me in his turn. That is my object. I speak by hearsay; and I "know nothing but what my friend Sutton has told me, who I have hitherto "found no reason to complain of. But Colonel Toone has doubts: let no "hurry take place, though the young man's time may draw near; let no appointment take place until Colonel Toone has seen this young man." Is

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not there, I ask, an end of the prosecution? Is not there an end put to this case by this answer of Mr. Abington's? Is not every one thing in the evidence of Colonel Toone explained, that at first seemed to be a ground of suspicion to the mind, and was so used by my learned friend in his statement to you, in order to make it appear that Colonel Toone was a much more cautious man, and much fonder of using his means of knowledge, than Captain Prescott, who acted rashly and hastily, in order to connive at, and encourage, and back up this friend of his, Mr. Sutton, this electioneering friend of his, in his attempt to sell his cadetcy. That Colonel Toone was to be praised and Captain Prescott blamed, because Captain Prescott hurried it over and Colonel Toone stopped it. Do I deny the fact? My denial avails not. The witness for the prosecution rebuts it: he has sworn it was Captain Prescott himself who stopped the promotion, that Colonel Toone might be satisfied.

Now, Gentlemen, one word more upon the way in which people sign these recommendations. When a man attests upon his own knowledge, and attests that which he knows not to be true, or when he pretends to know that which he cannot have knowledge of, he may be said to be doing an irregular thing by giving his certificate: but what do those persons who sign the answers declare? Colonel Toone, whose hand I have it under, says, "I do hereby "declare, to the best of my belief, that the petitioner's answer to the foregoing "questions are correct:" and Captain Prescott certified no more, when he said he believed what Sutton told him, than Colonel Toone did, when he says, under his own hand, that he believes what Captain Prescott told him. That must be evident to every attentive mind. But observe the easy course that Captain Prescott had to accomplish his object, if he had this view. It is clear that Colonel Toone, by signing this nomination, which he did without hesitating, would not have thought it so regular (and he appears to be a man who steers upon the outside line of regularity and punctilious correctness), it is clear that Colonel Toone thought there was nothing irregular in his nominating, though Captain Prescott ought to have been the name. He does not object to it: he signs it. But certainly, upon this, nothing could have been more easy than for Captain Prescott to make Colonel Toone give the nomination at once to Mr. Sutton, in which case Captain Prescott's name never

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would have appeared.—"Lend me your cadetcy: my friend Sutton will sign, "and then, instead of my name appearing on the books of the India-House, "connected with the name of Sutton as giving him a second cadetcy, it would "appear that I gave him one and that you gave him another."—He would never have objected to that; the evidence all shews that he would have done it. He signs the nomination, although it is a slight and almost harmless irregularity. The most usual way is, that the man who borrows signs, and here the man who lends signs, and so that object is very commonly avoided. But see how easily this supposed guilty purpose could have been accomplished by this gentleman. He does this very thing which increases his difficulty, and in the end frustrated his attempt. If he had got it from Colonel Toone and Sutton had recommended to Toone, or if he, without waiting for Sharp's observation, had said, that is another thing; he avoided, if you say this is the way to do it, why do I object to it, and inquire whether it is regular or not? there would have been an end of the question not only hours ago, but a year ago; but it is because he prefers taking the other and less irregular course; and when Mr. Sharp suggests one thing, raising difficulties against himself, according to my learned friend's view of the case, but nothing against himself according to my view of the case, because he had nothing to conceal, he says, "is there not a difficulty?" and that leads to the conversation you have heard.

Then, Gentlemen, you have it said, that Mr. Abington's name is used in writing the letter to Colonel Toone. I beg to say that is the regular course. It comes from that department, it does not come from the study of Mr. Prescott. The papers go to the office, they are prepared there and signed there: they go through the office, and it is regular that Mr. Abington should have done it. If not, do you think Captain Prescott would have put himself in the hands of that young man for an irregularity? do you think he would have made him an accomplice? but he says "take Mr. Abington's name in the "usual way, and write the letter to Colonel Toone, that this is the appoint- "ment he is to fill up." He does not suppress one name: he does not conceal Captain Prescott's name: he says, "write in Mr. Abington's name, but it is by my desire, so that the letter got to Colonel Toone in a way not to deceive any human being." It is "Mr. Abington's compliments, and he is desired by

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"Captain Prescott to send the enclosed papers to Colonel Toone;" and then they are carried on to the house of Captain Prescott by the messenger who had received them from the commodore. He says, "my order was, after I had "received them, to carry them on to Captain Prescott:" which is just to avoid going backwards and forwards from Colonel Toone's to the India-House; and then back again to Captain Prescott's, Captain Prescott's being the ultimate destination, and there being no earthly conceivable purpose for making three trips instead of one.

Gentlemen: you have already heard the respectable character of this gentleman from Mr. Astell; you shall hear it from others. They have not called the Chairman, who ordered the prosecution; nor the Deputy Chairman, who concurred in it, who is, likewise, a prosecutor; and we have no opportunity of knowing from them what passed in the year after the indictment was preferred: but I shall call before you his brother Directors, who are also the prosecutors, who know the inquiries that have been made and the motives for this proceeding, who will give you their opinion as to the high and unsullied character borne by this gentleman, whom you are called upon, on no better evidence than these surmises, that I have now shown you are sought by false construction, ingenious perversion, and by exaggerated statement, to be wrung from these plain innocent facts; upon no better ground, by your verdict you are called upon to consign him to infamy for the rest of his life, as guilty of the foul offence of conspiracy.

Mr. Starkie.

MR. STARKIE.

May it please your Lordship: Gentlemen of the Jury.

It now devolves upon me to make a few observations to you upon the case of Mr. Despard, who, I believe, stands the fourth defendant upon this indictment. Gentlemen, though he is a person in much humbler circumstances than the gentleman whom my learned friend, Mr. Brougham, has been lately defending with so much eloquence and zeal, he is a person of good family, and bears his Majesty's commission; whose reputation and liberty are as dear to him as those of any person, however exalted his rank: and I trust, Gentlemen, you will favour me with a continuance of that attention which, throughout the

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the evidence, you have paid to this case; because upon your decision must depend the question, whether my client is to maintain that reputation he has hitherto sustained, or depart this court a ruined and degraded man.

Gentlemen: although my observations in this case must be very short, inasmuch as there is but a very small part of the evidence that relates to the case of my client, Mr. Despard, before I proceed to make those observations, allow me to state what is the real charge against him. Gentlemen, the voluminous indictment I hold in my hand, containing no less than thirteen counts, will resolve itself substantially into the question, whether Mr. Despard did corruptly, for gain's sake, negociate the obtaining a commission for a person of the name of Back; for though the counts are differently framed, it will be found that in every one of them that specific charge is repeated, that the parties did corruptly, for gain's sake, negociate; and should you be satisfied that my client had any knowledge of what was passing between these parties who have pleaded guilty, and against whom, had they pleaded not guilty, the evidence given to-day would be fully sufficient and overwhelming, I say, should it even appear before you to-day, upon the testimony of Dr. Back, that Mr. Despard knew at the time the transaction was going on that a cadetship was to be obtained, I apprehend still, unless he did, according to the words of the indictment, corruptly, and for gain's sake, take a part in the negociation, he will be entitled to a verdict of acquittal at your hands.

But, Gentlemen, it must have been apparent to you long ago, that the evidence against my client depends upon the testimony, and wholly upon the testimony of the first witness called, Dr. Back; for I believe there is not one other of the numerous witnesses called on the part of the prosecution, who gives an iota of evidence that can in any way affect Mr. Despard.

Now, Gentlemen, certainly it is my duty, on this occasion, to state to you those circumstances which, according to my humble apprehension, ought to create a doubt in your minds, or the mind of any one who has heard that gentleman give his evidence, how far they ought to credit the testimony he has given, unsupported by documentary evidence, or the testimony of any other witness, or the probabilities of the case. You find Dr. Back, who is introduced as a respectable clergyman, and having resided upon the Continent many years, at last obtained a living, I believe the living of Little Hampton.

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Mr. Starkie.

Mr. Gurney.—No, he only lives there.

Mr. Starkie.—He lives there without any living; but he is a Doctor of Divinity: and you find that this person is attracted by an advertisement in the Morning Herald newspaper, of the date of the 11th August, 1826. Now, Gentlemen, observe the part he acts upon this occasion. If he had acted fairly and honourably to obtain a place for his son, what necessity was there for his resorting to a cloak, and assuming the false name he did upon that occasion: and I beg leave of you to bear in mind, as I have no means of calling a witness to contradict Dr. Back, and as the confidence you place in his testimony or withhold from him must depend upon collateral circumstances, because I cannot call witnesses to contradict what took place, as he says, between my client and himself, it is my duty to make such observations as will lead you to the conclusion whether you will believe him or not.

What is the conduct of Dr. Back? Instead of doing what any respectable man would have done,—to have gone in his own name to inquire into the circumstances, because he did not at that time apprehend there was any thing irregular in the transaction. What is the account he gives you? "I happened "to have a card of Colonel Edwards' in my pocket: it was by accident, and I "thought I would represent myself as Colonel Edwards:" and then he goes, with this base misrepresentation in his mouth, and represents himself as Colonel Edwards, which name he assumes throughout the whole transaction. I was a little anxious to learn who this Colonel Edwards was; because it is from little circumstances that Juries come to a clear knowledge of facts, and especially the character of those who give such testimony, which cannot be contradicted in any other way. I asked him who was Colonel Edwards; because it was possible he might know something of the name: that gentleman might have left a card at Dr. Back's house, or it might have been delivered to him at his house. But what is his answer: that Colonel Edwards was the first husband of Dr. Back's present wife, and that he died so long ago as 1819, or rather he married in 1819; so that, reckoning from that date, he must have died of course some time before that: but reckoning from that date, you will find he had the card of a person who had been dead for seven years by him; that he had got a store of such cards; he had got not fewer than a hundred of such cards. Whether that is an account that satisfies you, or whether he did this

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for a fraudulent purpose, representing himself as Colonel Edwards, it will be for you to decide.

Then, Gentlemen, afterwards he says, he was surprised to find that a price was expected for the Cadetship for which he applied. Do you think it possible that could have been the real reason of Dr. Back breaking off the communication, because a price was asked for the situation he wished to procure for his son? Is it consistent with the common practice, that valuable situations desirable for a son are disposed of gratuitously? Your knowledge of the world will bring you to a very different conclusion from that. If you refer to the advertisement, it will be apparent from the very terms of that advertisement that that was not intended; for the advertisement was read, and by that it is stated that the outfit will require means, and no person need apply who cannot supply means. And, Gentlemen, it is impossible for men of your understanding to come to any other conclusion upon this subject, than that this was a mere pretence of Dr. Back to break off this negociation, and take the course he did; for you will find that after this, in February, he makes a disclosure of the subject to the East-India Company. Now at what time any disclosure took place, as far as any collateral testimony goes, you have no evidence whatever. I put to him some questions, which he answered thus:— "I made a communication to the East-India Company in February; I had "much communication upon the subject." And with respect to the time, even, he might have been confirmed by the production of these letters, because they must have been in the possession of the prosecutors. It rests upon his sole testimony that he gave that information to the East-India Company, and had been induced, without any other motive, to come forward now; except that he was acting in collusion with certain persons in the way of being detected, and he chuses to become the agent and informant of the East-India Company, and buy impunity, if not patronage for his son: and you see, after that time, he becomes a spy, after being an informer or agent for the East-India Company. That is a circumstance upon which I mean to impute no blame to the Company, because we know, in many instances, it is impossible, without the assistance of agents and spies, and persons not of the most respectable character in the world, that the ends of justice can frequently be obtained; but in all the cases upon the subject that I have been

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aware of, it has been the universal rule, that where a party is capable of confirmation, to shew that the communication was fairly and *bonâ fide* made, and was going on with the concurrence of his employers, it has been the universal rule to produce that confirmation. Probably you have attended in court when prosecutions used to take place for passing forged Bank of England notes: in all those cases the constant practice, according to my experience, has been, that although it was necessary, on the part of the Bank, to hire persons who, under false names, introduced themselves to persons guilty of illegal dealings, yet there was always in those cases full evidence to confirm them in all the collateral parts of the evidence that such agents had given. For instance, where a party has been employed to purchase forged notes, nothing is more common than for the constable, or person who employs him, to mark the money to be given to the person who obtains them, in order that the person may not be without confirmation; that the party may be taken up with the money in his pocket, and that the evidence of the agent may receive such a confirmation. Now, in this case, circumstances have been stated which, if they were true, this party might have been confirmed again and again, for these letters, which he says he wrote to the East-India Company, must have been in the custody of the prosecutors, and might have been produced to-day, and those letters would have been strongly confirmatory, if any such had existed, of the testimony he has given to-day. There is also another circumstance, and a very material one, upon which this person might have been confirmed; and that is this: You observe, that he not only refreshed his memory, but read copious passages from the notes he had. Those notes he asserted, upon cross-examination, were shewn from time to time to the agent of the East-India Company. Now, Gentlemen, certainly that would have been a most material corroboration, if they had shewn, or called the witnesses to prove, that night after night, when these conversations had taken place, that he did detail conversations, and produce writings, and certify that writing, and shew beyond the possibility of doubt, that this was the report that this informer gave from time to time.

Gentlemen, there is another circumstance that might have been proved. He says notes to a very large amount, £500 and £300, were actually in the possession of some of these parties,—not in the possession of my client; nothing

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nothing of that sort is proved: but these notes were in the possession of these parties who have pleaded guilty. And I ask again, why are not the parties called? why are not the agents of the East-India Company called, who could have sworn to the delivery to Dr. Back of these notes, to the amount of £500 and £300, to be used for these purposes?

Thus it stands upon the testimony of Dr. Back: and I ask you whether, considering that Dr. Back is the sole witness who gives the slightest particle of testimony against Mr. Despard, whether you are prepared to say you will give such implicit credit to the statement he has made, considering the circumstances under which he has given his evidence, so as to consign a person who has filled the situation of my client to utter ruin and degradation. But, Gentlemen, even supposing you should be of opinion that any part of Dr. Back's statement is true, still I submit to you, and with considerable confidence, that even taking that to be true which he has stated, it would not warrant you in pronouncing a verdict of guilty against my client; because, at most, it only shows that something was said about this negociation at the time he was present, between these persons, Gibbons and Dr. Back; but it is not pretended by that evidence, that Mr. Despard took any part in the negociation: and therefore, even should you be of opinion that he had some knowledge of what was going on, yet I apprehend, with great submission to his Lordship, unless you can come to the conclusion that he did corruptly, for gain's sake, negociate or conspire, or do some act for the purpose of furthering an illegal object, although it might have been better had he separated himself at once from that society, he is not within that offence which is charged upon this indictment.

Gentlemen, there is one circumstance which I ought also to observe upon: that Dr. Back, in the course of his evidence, has styled him with the title of "Captain." I believe he is only entitled to the rank of lieutenant; but you must know that, in the British army, in the regular forces, I understand, Gentlemen, he does fill the situation of captain, and that he was rightly called by Dr. Back. But you are fully aware, I have no doubt, that though the sale of cadetships in the East-India Company's service is illegal, it is not any thing illegal to sell commissions in the regular army, In the Act passed to make it illegal to be at all concerned in negociating the sale of cadetships,

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there is a clause enacting, "that nothing in that Act shall extend to any "purchases, sales, or exchanges of any commissions in his Majesty's forces, "for such prices as shall be regulated and fixed by any regulation made, or "to be made, by his Majesty, in that behalf, or to any act or thing done in "relation thereto, by any agents." I merely mention this by the way; because military men, as my client, Captain Despard is, might not at the time advert to the legal distinction and the substantial distinction, which certainly there is between the sale of an East-India Company's office and the sale of a commission in this country, and therefore he might not, as some others might have done, better informed on the subject. He is no lawyer; he is a half-pay officer, He did not at once say, "you are doing a very "scandalous thing," and leave them at once: he might think they were acting legally.

Mr. Gurney.—If you read the Act of Parliament you should read it correctly. The words are, "provided that agents shall be agents of regiments authorized by the Commander-in-chief of his Majesty's forces, or by the Colonels or Commandants of regiments or corps."

Mr. Starkie.—I do not mean to justify it: he might easily suppose that, though his ignorance of the law would be no excuse; I only mean to say, it may operate so far as to show why he did not exclaim against their conduct. You observed the way in which Dr. Back gave his testimony: he produced a great number of notes before you and read them copiously: he stated that all those notes were written at the same time.

Lord Tenterden.—No, he did not say that.

Mr. Starkie.—He said they were written at the time that each bears date. I should like you to see those notes, and you will judge, for instance, whether that was the case, or whether a great many of those entries have not been made at the same time, although they bear different dates; and also look at the original entries, and there you will find that those circumstances he afterwards stated with respect to the conversation are very different indeed, or wholly omitted: and when he reduced those conversations into writing does not appear.

But let us see at what time it is, according to Dr. Back's account, that my client becomes a party to this transaction, in the way in which he states it.

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The first time he speaks of seeing Captain Despard is the 25th of April, 1827: before that time he did not know there was any such person in existence. The negotiation had, at that time, gone so far, that upon that day, or the day before, the half of a £500 note had been deposited with Mr. Gibbons, and Mr. Gibbons had given his receipt for it. The negociation was to a great extent completed; the price had been agreed upon and half of the note given, therefore there seems to be no earthly reason why he should be introduced by the other parties to conspire for this illegal purpose. There seems to be no earthly reason, when they had so far advanced as to obtain the half of a £500 note, why they should at all introduce Captain Despard into their illegal partnership, with a view to give him any part of the profits; nor is there any part of the evidence that could at all satisfy your minds he was to have any part of those profits. It is not pretended in these conversations that he was to have any part, or that any money passed at the time he was there. You find upon the 25th of April the consveration was a very short one; and the utmost that Captain Despard said at that time was, "you "have been a long time about this, I would settle it very soon: I know "Captain Anstice;" and it is very likely he did.

But does it follow he was advising them to an illegal negociation, because he knew Captain Anstice could obtain a preferment of this kind? Is it to be inferred that he meant illegally to obtain it? The conversation, as it appears to me, certainly does not go beyond that: it is merely stating, that if he had known of the business sooner he would soon have settled it. Then it appears the next day the parties are at Captain Anstice's office, Captain Anstice having been the friend of this party. The particulars of the conversation are not stated: all that is stated is, that Captain Anstice said he had the half of the £500 note, and that that would be useless unless he had the half of a £300 note; and that Captain Anstice had most of Mr. Astell's appointments. It does not follow that he had them illegally: still less does it appear that Captain Despard was to have any illegal share or benefit from the interest to be derived.

But there is another circumstance on my mind which is very strong, to shew that Captain Despard was not to receive any part of this money. I allude to the particular time when the matter was to be finally wound up and settled,

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and when it was expected that this young man, the son of Dr. Back, would be passed at the East-India House, the remainder of the notes was to be produced, and those who were concerned in the transaction, and received any part of the dividend and profits, were to receive their payments: but although it is stated that many of the parties who have pleaded guilty were there, it does not appear that Captain Despard was there; and if he had so far committed himself as to have made himself a party to this illegal agreement, it will be for you to say whether he would not have been anxious to have received the price of his iniquity with the rest, and been in attendance at the Ship Tavern, to receive the profits. You find, so far from that, that I think one of the witnesses stated (Dr. Back, I believe) that Gibbons said, as the cadetship had been bought for £800 instead of nine hundred guineas, and he had got it for less than he ought to have had it for, that he ought to have £45 and Mr. Wright £100 of the difference. Now, Gentlemen, I think this evidence is available in this way. At the time they are talking of the participation of the money, at the time the money is being received, Captain Despard is not there to receive any part of it, although the sharing of it is spoken of. Gentlemen, there is no evidence to shew that Captain Despard was acquainted with any of these persons, except Captain Anstice and Mr. Gibbons: with respect to the other parties who have pleaded guilty, they may have been perfect strangers to him up to the time of the transaction.

Now, Gentlemen, under these circumstances, considering, in the first place, that even if Dr. Back's evidence went much farther than it does, considering the situation in which he stands, considering the account he himself gives of himself, I submit he is not a person who stands so fairly, and of such unsullied reputation, before you, that you can safely convict Captain Despard upon his evidence; and the more so, when you consider that much evidence might have been given to support his character that has not been adduced. Then, Gentlemen, as I have already observed, the probabilities of the case are the other way. It is very improbable that Captain Despard should have been admitted a participator in these profits. He did nothing, even allowing Dr. Back, who is not an unwilling witness, whose interest is probably to convict as many of the defendants as possible, he does not affect to say there

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was any hint given that this gentleman was to be a participator in this transaction.

Gentlemen, having made these observations to you, I will not repeat them. The evidence itself is very brief against this gentleman, as my observations must have been. You know, as well as I do, that before a jury can come to a conclusion that a prisoner is guilty of such an heinous offence as this, it is not sufficient that they should have some general notion floating in their minds that all is not as it should have been, but they must be satisfied in their conscience that the party is really guilty; and they ought to exercise the same discretion with respect to the safety of a fellow-creature who stands before them, as if their own and most solemn interests were at stake. Gentlemen, a jury may, without any feelings of great emotion, afterwards remember that perhaps they may have acquitted a guilty person; but, Gentlemen, if I mistake not, the feelings of every man amongst you, and every man of humanity, must be bitter indeed, if any circumstance subsequent to the trial should lead him to suppose he has been the instrument of convicting a fellow creature, and ruining a man who was actually innocent. Gentlemen, under these circumstances, it is for you to say whether Captain Despard was guilty of corruptly, and for gain's sake, negotiating the obtaining this employment for this young man. I will not repeat those observations I have made. I thank you for the attention you have paid to the whole of the case, and I have no doubt you will come to the conclusion that your consciences point out as being the proper one.

EVIDENCE FOR THE DEFENDANT, PRESCOTT.

JOHN BAKER RICHARDS, Esq. sworn.

Mr. Richards.

Examined by Mr. Pollock.

I believe you are the Governor of the Bank of England?—I am.

How long have you known Captain Prescott?—More than thirty-five years.

What character during all that time has he borne?—I have always considered him to have borne—

Lord

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Mr. Richards.

Lord Tenterden.—How extraordinary it is, that gentlemen of the education of those before us will not answer the question put to them: the question asked is, what is his character?—Always that of an honest and honourable man.

Mr. Gurney.—That is the only thing that is legitimate evidence.

Mr. Masterman.

JOHN MASTERMAN, Esq. sworn.

Examined by Mr. Pollock.

I believe you are a banker and East-India Director?—Yes.

How long have you been acquainted with Captain Prescott?—I think between eight and nine years.

What is the character he has borne for honour and integrity during those years?—Always that of an honourable and upright man.

Mr. Alexander.

JOSIAS DUPRE ALEXANDER, Esq., M.P. sworn.

Examined by Mr. Pollock.

You are a Member of Parliament and an East-India Director?—I am.

How long have you known Captain Prescott?—I have known Captain Prescott since the year 1798; thirty years next October.

What character has he borne during that time for honour and integrity?—A remarkably good one.

Have you had any means of knowing any thing of his conduct in the disposal of his patronage?

Lord Tenterden.—That is a question you cannot ask, that is a fact.

Mr. Pollock.—What character he has borne as to that particular point.

Lord Tenterden.—That is a different thing.

Mr. Pollock.—What character has he borne in regard to the disposal of his patronage, has he borne any character?—I believe he has acted very fairly.

What is his character upon that?

Lord Tenterden.—This is getting too near the objectionable point.

Mr. Gurney.—This is a fact. If you pursue it, I must cross-examine upon it.

MAJOR

Court of King's Bench.

MAJOR JAMES RIVETT CARNAC, sworn.

Major Carnac.

Examined by Mr. Pollock.

You are an East-India Director?—Yes.

Have you known Captain Prescott for any length of time?—I have known Captain Prescott for about five years.

During that time what character has he borne for honour and integrity?—Always the character of an honourable and benevolent man.

CHARLES MILLS, Esq. sworn.

Mr. Mills.

Examined by Mr. Pollock.

I believe you are an East-India Director?—Yes.

How long have you known Captain Prescott?—About eight years.

What character has he borne during that time?—That of a straight-forward honourable man.

VICE-ADMIRAL SIR PULTENEY MALCOLM, sworn.

Admiral Malcolm.

Examined by Mr. Pollock.

How long have you known Captain Prescott?—Thirty-two years in various situations.

What is the character he has borne?—An honourable, liberal, and open-hearted man.

SIR CHARLES FLINT, sworn.

Sir C. Flint.

Examined by Mr. Pollock.

You are the Secretary of the Irish office?—I am.

How long have you been acquainted with Captain Prescott?—Twelve years.

During that time what has his character been?—The highest possible character.

H. BONHAM, Esq., M. P. sworn.

Mr. Bonham.

Examined by Mr. Pollock.

I believe you are a Member of Parliament?—Yes.

Have you known Captain Prescott any time?—I have known him, I believe, about thirty-five years.

What character has he borne during that time?—During that time, I think he has borne the character of a very honourable, upright, good-natured man.

 LEWIS

Court of King's Bench.

Mr. Lloyd.

LEWIS LLOYD, Esq. sworn.

Examined by Mr. Pollock.

I believe you are a banker in this city?—I am.

How long have you been acquainted with Captain Prescott?—About ten years.

During that time what character has he borne?—That of a most upright and honourable man.

Colonel Frederick.

COLONEL FREDERICK, sworn.

Examined by Mr. Pollock.

How long have you known Captain Prescott?—From the time of his birth.

What character has he borne during all the time you have known him?—A kind-hearted and honoura be man.

Mr. W. Curtis.

WILLIAM CURTIS, Esq. sworn.

Examined by Mr. Pollock.

You are a partner in your father's house, Sir William Curtis and Co.?—Yes, as bankers.

How long have you known Captain Prescott?—About ten years.

During that time what character has he borne?—That of an honourable, honest, upright man.

Sir J. Shaw.

SIR JAMES SHAW, Bart. sworn.

Examined by Mr. Pollock.

How long have you known Captain Prescott?—I think I have known Captain Prescott between ten and twelve years.

What character has he borne during that time?—He has borne a character of the very highest description, an honourable man, and a frank straight-forward seaman.

ROBERT WILLIAMS., *Esq. called, but did not answer.*

THOMAS WILSON, *Esq. called, but did not answer.*

CORNELIUS

CORNELIUS BULLER, Esq. sworn.

Examined by Mr. Pollock.

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Mr. Buller.

You were lately Governor of the Bank of England, and are now one of the Directors?—Yes, I am.

Do you know Captain Prescott?—Yes, and have for several years.

How many?—Eight or ten years.

What character has be borne during that time?—I have always considered him a highly honourable and respectable man.

Lord Tenterden.—That is not an answer to the question, I am obliged to insist upon it.

Mr. Pollock.—You have stated what you yourself considered him to be: the question is, what character has he borne?—I have always understood him to bear the highest character.

NICHOLAS BROWN, Esq. sworn.

Examined by Mr. Pollock.

Mr. N. Brown.

I believe you are one of the Commissioners of the Victualling Office?—I am.

How long have you known Captain Prescott?—Fifteen or twenty years.

During that time what character has he borne?—I have always found him to be—

Lord Tenterden.—That is not an answer to the question. What is his character?—A plain, honest, upright-dealing man.

CAPTAIN LEWARD sworn.

Examined by Mr. Pollock.

Capt. Leward.

How long have you known Captain Prescott?—About thirty-four years.

During that time what character has be borne generally in the world?—That of an honourable and upright man.

JOHN CAPEL, Esq. M.P. sworn.

Examined by Mr. Pollock.

Mr. Capel.

I believe you are a Member of Parliament?—I am.

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Mr. Capel.

How long have you known Captain Prescott?—About twelve years.

During that time what character has be borne?—That of an honourable upright man.

Col. Davies.

COLONEL DAVIES sworn.

Examined by Mr. Pollock.

You were in the East-India Company's service?—Yes.

How long have you known Captain Prescott?—Nearly thirty years.

During that time what character has he borne in the world?—That of an honest and honourable man.

Mr. Robinson.

ISAAC ROBINSON, Esq. sworn.

Examined by Mr. Pollock.

You are one of the Elder Brethren of the Trinity-House?—Yes.

How long have you known Captain Prescott?—Thirty-nine years intimately.

During that time what character has he borne in the world?—That of a man of the highest honour and integrity, open-hearted and kind.

Mr. Brougham.—There are twenty or thirty more, but I do not trouble your Lordship with them. They come from different parts.

Lord Tenterden.—Do you call any witnesses for the other defendant?

Mr. Platt.—No, my Lord.

Lord Tenterden.

LORD TENTERDEN.—SUMMING UP.

Gentlemen of the Jury:—This is an indictment against Samuel Sutton, William Andrews, James Patten Anstice, John Edward Despard, Joseph Tyndale, George Henry Gibbons, Thomas Wright, and Charles Elton Prescott; and the indictment charges, that the seven persons first named (that is, all except Mr. Prescott) conspired together, for gain, reward, and profit, to negotiate for one Edward Drake Back to be nominated and appointed to a certain employment, that of a Cadet, under the United Company of Merchants of England trading to the East-Indies; and then it charges, that Captain Prescott unlawfully, wilfully, and knowingly aided, abetted, and assisted the other persons I have named. That form of charge is varied in the different counts; but the

the latter counts are all substantially the same, charging the first seven defendants with conspiring together unlawfully to obtain this appointment for this young man.

Mr. Gurney.—The first count does not charge a conspiracy.

Lord Tenterden.

Lord Tenterden.—It is, that they unlawfully negociated for this appointment. There are several other counts of that class, varying the charge as to negociating for gain or reward, all of them importing that the act done by them was done for gain or reward, and that Captain Prescott aided and assisted them. Then there is another set of counts, which charges all the defendants, including Captain Prescott, with combining and conspiring unlawfully and corruptly, for gain, reward, and profit to Samuel Sutton, to recommend Edward Drake Back to be nominated and appointed to this office of Cadet under the East-India Company. There are several counts in that class, varying the charge, but not in any material degree. Then there is another count, perfectly distinct from all the rest, which states, that all the defendants conspired, falsely and fraudulently, to cause and procure a false representation to be made to the Court of Directors of the United Company of Merchants of England trading to the East-Indies, that young Back was a person with whose family and connexions Captain Prescott, at the time of such representation, was well acquainted, for the purpose of obtaining for Edward Drake Back the nomination and appointment to the employment of a cadet, the defendant, Prescott, and all the other defendants, being wholly unacquainted with his family and connexions.

Now, Gentlemen, as it regards all these counts in this indictment except the last, no person can properly be convicted upon it, who is not in some way a participator in the unlawful scheme to obtain this appointment for profit and gain. I use the word participator, because that term has been employed by the counsel for one of the defendants: but in order to convict persons of a charge of this kind, it is not necessary, in point of law, that each of them should have in his mind to participate in the gain; for if they all combine to attain the object for profit and gain to some of them, they are all guilty within the meaning of this charge. No person can be convicted upon these two first sets of counts, who is not conscious that gain and reward is the object of some of the defendants with whom he conspires: but it is not necessary that he,

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Lord Tenterden.

he, individually, should be one of those to share. No person can be convicted, if he is not conscious that those with whom he conspires have gain for their object; but it is not necessary that every one should participate. That is the law as regards this part of the charge, which is the most important part of it. The latter part is, that they all conspired falsely and fraudulently, to cause and procure a false representation to be made to the East-India Company, that young Back was a person with whose family and connexions Mr. Prescott, at the time of that representation, was well acquainted.

Now to this charge, all the first class of defendants, except Despard, have acknowledged their guilt. Five, I think, of them have pleaded guilty before we came into this place; and another of them desired that your verdict should pass against him. The only two persons now upon their trial are Captain Despard and Captain Prescott: those are the only defendants. The case as against them stands upon very different grounds; and therefore it is necessary I should direct your attention to the evidence as it respects each of them, separately and distinctly.

Now, the only witness called who speaks to any participation by the defendant Despard in this transaction, is Dr. Back; and the account he gives of it is, that having seen an advertisement in a paper called the Herald, in the month of August 1826, professing to be addressed to parents and guardians, and representing that a permanent situation offered to a youth under twenty to go abroad: his outfit would require means without which none need apply. That Dr. Back having a son for whom he was desirous of obtaining some provision, wrote a letter addressed to Alsop's Buildings, and received an answer; and, in consequence of that, he called at the house in Alsop's Buildings, where he saw afterwards the defendant whose name is Wright. He says, he took with him some cards, having upon them the name of "Edwards," which was the name of the first husband of his present wife, many of which cards he had; and it is quite clear what the gentleman says that it was natural, and we might suppose it would so happen, that he would not wish in the outset to appear personally, and he went throughout in the name of "Colonel Edwards." Then he relates, first, his interview with Mr. Wright; then a letter from Mr. Wright, representing he is going out of town, and referring him to Mr. Gibbons. He gives an account of his conversation with Mr. Gibbons, and

and then depositing first one half of a £500 note and the half of a £300 note; and he produces several letters from Gibbons confirmatory of that, and also two receipts from Mr. Gibbons.

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Then he tells you, in the next place, Gibbons introduced him to Tyndale: that after a time he was introduced to the defendant Despard. Before, however, he was introduced to Despard, he had learnt from Mr. Wright that the sum required for the appointment was, for a Cadetship in the Infantry, £600; but if in the Cavalry, £800 or £900. He reached town in the year 1826; but finding the sum did not at all suit him, he abandoned the negociation: but that, in the spring of the following year, his son, for whom the appointment was to be procured, coming of age, and being possessed of a sum of money, he was desirous to renew the negociation. However, before he did that he thought he would have some communication with the Chairman of the East-India Company. He saw that gentleman then, and several times afterwards the solicitor to the Company. He was informed he was in great danger in what he was doing; that it was contrary to law, which he was not aware of; and with that caution he would have nothing more to do with it. But it was the wish of those who had the management of the affairs of the Company, and very natural and proper feeling it was, to trace to the very bottom the persons thus professing to traffic in this appointment; and at the suggestion of the Chairman or the Solicitor (the Chairman he puts it) he was desired to go on with the negociation, and to hold out he was willing to negociate with them, that the Company might find out who the parties were; and that he, in consequence, had made communications from time to time tothe Chairman or the Solicitor, and that he made memoranda, from time to time, of the conversations and other parts of the transaction.

After the introduction to Tyndale, which is after both the sums of money had been paid, Tyndale introducing him to Despard (and Tyndale and Wright have pleaded guilty), he says "On the 14th of April I met Gibbons and "Tyndale. This was the first time I saw Tyndale. Gibbons shewed me an "acknowledgment from Tyndale that he had received the half of the note "for £500. On the evening of the same day Gibbons introduced me to "Tyndale, and Gibbons then said that nothing could be done on that day, as "there were no Directors at the India-House; that we must wait till Monday." Then the Easter Holidays were mentioned as reasons for delay: another

reason

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reason was, the unsettled state of the Ministry. There was an intimation given that the appointment was to come from the President of the Board of Control. The then President has been examined, and he has said, as you might have expected, that he knew nothing about it. Then it appears that, after the half of the £300 note had been deposited, on the same day, the witness says, " Tyndale introduced me to Captain Despard at Lloyd's Coffee-" House." This is the first time that Captain Despard is introduced. He says, " Captain Despard lamented he had not been consulted sooner in the " business; that if he had I should not have been detained so long in town: " he would soon settle it." He says, " Gibbons left me at Lloyd's in company " with Captain Despard, and promised to return in about a quarter of an " hour. I waited for him four or five hours, but he did not come. Captain " Despard did return, and asked me if I had seen Gibbons since he had left: " I replied no, and he expressed great astonishment that he had not. Then " we appointed to meet the next day, and we did so. That is the 26th, I " only met Captain Despard on that day. He told me that I should not be " disappointed again, for he would introduce me to two very respectable merchants. He then took me to the office of Captain Anstice and Mr. Stubbs, at Great St. Helens. Captain Despard introduced me to Captain Anstice; and Captain Anstice then said he had had the half of the £500 note in his possession for some time, but that it was no manner of use until the half of a £300 note was also deposited." Captain Despard is there at the time this passes. " Before we went there, Captain Despard had said that " Captain Anstice had got most of Mr. Astell's patronage, and that this was " supposed to be one of Mr. Astell's appointments." Mr. Astell is called, and he says, of course, he knew nothing about this, he being a Director at the time. Then, on the 27th, he attended again at Mr. Anstice's office. They were running about from one place to another. He believes they were at Captain Anstice's, and Captain Despard called upon him again at the Monument Coffee-House, and said every thing would be completed by the next day. He says, " I was waiting at Captain Anstice's office in very great " anxiety, and expressed my doubt of the ability of the parties to procure " the appointment, when Captain Anstice said he would forfeit £100 if it " was not completed the next morning; and if I would leave the young " gentleman with him, if I wanted to go out of town, he would take care of

" him.

" him. That the appointment would be forwarded to the house of the " Director who was to give it, who was in Hertfordshire, and that the Director " had declined signing it until the half of the £300 note was in Captain " Anstice's possession. That he had forwarded the appointment by post to " this Director, and he expected it by the return of post." He said, " the " gentleman had been tired of waiting for the £300, and he had expressed " himself in very angry terms at the delay, and said he would wait no " longer.

This is the last interview he mentions as having had with Captain Despard; and if the account he has given of the part he took is correct, no doubt Despard was a party to this combination to obtain this money, for the benefit, if not of himself, at least of others. If Dr. Back gives a correct representation, it is clear the matter of profit and the note are spoken of when Captain Despard is present. It is said, you are not to believe Dr. Back. Why not? It is said that the prosecutors ought to have called the Chairman or the Solicitor of the Company. Why are you to support the testimony of a man who is not in the least broken in upon by any thing that has taken place? What motives could he have to accuse a man of this crime of whom he had no knowledge? Is it to be supposed that a man is to come forward and invent a charge of this kind? In another part of the story, there is abundant confirmation by all the other parties pleading guilty, and confirmation as to many of them, by the letters they have written; and it will be for you to ask yourselves, whether there can be any doubt in your minds upon what Dr. Back has said of the part that Captain Despard took in this transaction. There is no reason why he should accuse him falsely.

Then he goes on with the further narrative, which I need not give in very minute detail. We come to the 28th: that is a material day, connected with what appears afterwards with regard to Captain Prescott. He waits all that day in expectation that Captain Anstice would come. Captain Anstice went out with him, and they endeavoured to find Mr. Andrews: they went to the office of Mr. Andrews in Waterloo Place, but he was not there. " Captain " Anstice said that I had great reason to complain, that I was ill used. On " the next day, the 29th, I saw Mr. Andrews at his house in Brook Street, " Grosvenor Square. I saw Gibbons at Captain Anstice's house on that day,

" in St. John's Wood Road: Gibbons was talking to Anstice at the door of " his house. Anstice said, Gibbons wanted to go with us to Mr. Andrews, " and he would not allow it. We went there without him. We saw Andrews, " who said the appointment was certain: that the gentleman who was to give " it was to be in town the next day, and he would bring the appointment with " him to Great St. Helens by two o'clock the following day. He also said, " he was sorry that he and I had missed each other the day before, that he " wished to settle the business as much as I did, and that the money would " be very useful to his client at that particular time. He said, I was to keep " it secret and not to let the business transpire." The next day was Monday, the 30th. He went there by appointment. " I waited till four o'clock and " Mr. Andrews did not come. At last he came, and said that his friend, who " was to give the appointment, would be with him that evening, and if Captain " Anstice could call upon him in the afternoon, in his way home to St. John's " Wood Road, the hour for a meeting the next day should be fixed." On that day he also received a note from Gibbons: I need not read that.

On the 1st of May he says, " I went to Captain Anstice's by appointment. " There was a note arrived at Captain Anstice's from Mr. Andrews, which " Mr. Stubbs opened;" and then the hand-writing of Mr. Andrews was proved, and that note was read: and, in consequence of that letter, he sent his son down to Mr. Andrews' office.

Then we come to the 2d of May. He says, on that day Mr. Andrews and Mr. Sutton came to him. Mr. Sutton is not introduced into the business till the very close: the 1st of May is the first day; Mr. Andrews very late, and Mr. Sutton not till afterwards. " I saw Mr. Andrews and Mr. Sutton, who " called and said, that as every thing was now complete, I ought to deliver " them the other two halves of the notes." He says, " he refused to do it till " the young man had actually passed. They continued to press for the other " half of the notes on our walk to the India-House, and as we were about to " go into the coffee-house, the Ship," where they did go in. He said he would come to them presently, wishing to consider of it. He went back and put the two halves of both the notes upon the table. Then there was a new difficulty started by Mr. Andrews or Mr. Sutton, that the corresponding halves were not there. They desired him to walk to the other end of the room; but

before

before he did that he took up the half of the five hundred pound note. He says, "I declared positively I would not give it up till the young man had been "sworn in. My son was walking about waiting. We all went to the India-"House together. I think Captain Anstice took up the other half: one of "them took it; and having done that, the papers were put into his hands by "one or other of them." That he went and found his son: he was waiting under the door of the India-House.

The important part that affects Mr. Prescott is, that the papers traced into his hands on the Saturday and Monday evening, are found in the hands of these men, Sutton and Andrews, and by them delivered over to Dr. Back.

He then went and found his son and went to the Cadet Office, and Mr. Gibbons came to him there: that is not material. When they went to the office, he gave the appointment to a clerk in the Cadet Office, who immediately disappeared with it. He went out of the room, and waited for him to come back till six o'clock, but the clerk who had taken away the papers never returned. Then he relates what passed between Mr. Gibbons and him while the clerk was away. He said "you have got this appointment for £800 instead of "900 guineas, and he wanted to receive the difference between £800 and 900 "guineas, being £145; and that he was to receive £45 and that Mr. Wright "was to have £100." He left the India-House two or three times and went to the Ship, where he found Mr. Andrews or Mr. Sutton, or both of them. "They said, when I went, that I was detained so long at the Cadet Office, "that they thought there must be something wrong: they could not tell what "to make of it; there was something irregular they were afraid. Before we "parted Sutton walked with me into the street behind the India-House. I "forget the name of the street. He said, he hoped there was nothing wrong; "for if the matter was found out he should be a ruined man." He appointed to meet him the next day, to tell him what turn things had taken, but he did not go. He came afterwards to him at Little Hampton: nothing particular passed. He begged particularly to know what was said when he was before the Directors, or what was going forward; but the witness told him he should have nothing to say to him upon the subject. Captain Prescott he never saw in his life. He thinks his son was baptized on the day of his birth, in October 1805, so that in the early part of 1827 he would not be twenty-two.

 Then

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Then he is cross-examined on behalf of Captain Despard. He says he never went but upon this occasion in the name of Edwards, or by any other name: there is no proof that he did. That was when he went to negociate for the office. He says he was usually dressed in black: he might have on a black silk handkerchief; he had been in the habit of wearing black silk handkerchiefs. He has worn an undress military coat and yellow waistcoat upon the Continent, as persons often do, and that he has worn a blue camlet cloak, but never in their presence. That the cards were Colonel Edwards's, who was the first husband of his present wife: they were preserved; they were found in some drawer or some such thing. He never went by the name of Drake on the Continent, he always went by his own name. He was on the Continent some years. He was chaplain to a foreign garrison, and he was private tutor to one of the sons of the Duke of Richmond.

The remainder of the evidence is introduced to affect the defendant Mr. Prescott. The first witness who speaks with regard to him is Colonel Toone, who is a Director of the East-India Company, and has been so thirty years. He says Mr. Prescott has been for some years past a Director, and he served with him seven years in the direction, which made him acquainted with him. He says, the Directors fill up the patronage in their turn, and sometimes they lend them to each other. If a particular Director wishes an appointment for a friend, he gets it from a brother Director, and gives him another. In the latter end of April last year, Mr. Prescott applied to him for an appointment by a note, and that note is to ask him if he can let him have a turn in the Madras cavalry. He met him in the street, and told him he should be happy to accommodate him, having a great respect for him, and that there was no man in England, Scotland, or Ireland whom he would be more willing to oblige: he evidently thinks very highly of him. The next day he met him and spoke to him about the nomination. It is not material to inquire what that was; but he thinks on the following morning, or on the next day but one, he spoke to the defendant, Captain Prescott, and he told him something had happened that made him very anxious about the promise he had made. " I said, 'do you know the young man perfectly well?' he said 'yes, he is one of " 'the finest youths in England.' I said, 'do you know his family:' He answered, " 'yes, I know his father, he is a respectable clergyman in Devonshire.' He

" said

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" said it was necessary to quicken the matter, as the young man was within " two months of being of age (that means twenty-two, and after twenty-two " he could not be appointed.) He said, ' I suppose you ask these questions " ' in consequence of some appointment three or four months ago ; 'and I said, " ' I did, it was in consequence of that.' He said he knew this young gentle- " man very well, and his father was a clergyman in Devonshire."

Now, whatever character this gentleman, Mr. Prescott, may have borne, if Colonel Toone speaks the truth, it is clear he was representing that which was false and untrue. He takes upon himself to say he knows the young man, and he was as fine a youth as any in England ; that he only wanted two months of twenty-two, and that he knew his father, who was a clergyman in Devonshire ; he never in his life having seen either the father or the son, and having no knowledge of them.

He says, "after that conversation I sent a note to Mr. Abington, who is " the chief clerk of the cadet office," through which this appointment must pass : it is in these words. "William Abington, Esq. be so good as to pass " Captain Prescott's youth without delay, as he is near twenty-two, and I will " sign the papers on Wednesday morning next ; but let the youth pass as soon " as possible." Then he puts a postscript : "If the papers are sent to me " this day I will sign them." He says, "on the same day I received a packet " purporting to come from the head of the Cadet Office, enclosing those two " papers, A and B." The papers were shewn to the witness : he says, " I " signed them and enclosed them, and sealed them up, and directed them to " Mr. Abington at the India-House, the same day, by one of the messengers " of the India-House, who waited for an answer." He says, " I was called for " from dinner and signed the papers ;" and suddenly something occurred to him afterwards, that he had signed what he would not willingly have done. He says it was contrary to his practice to sign till he had seen the individual : that he wrote a note to Mr. Abington and sent it by the two-penny post. Now the note to Mr. Abington is, " I signed the papers you sent me this " evening ; but before the matter is finally concluded, I request you will con- " trive to let me see the youth, and with that view I will call at the India-House " on Monday next, and I will attend there before twelve o'clock, and request " the youth to attend at twelve on Monday next." Then he says, he sent

a note

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a note by his servant to Mr. Prescott the same evening. Then Joseph Williams says, he is servant to Colonel Toone; that his master sent him with a letter to Captain Prescott's about April in the last year. He took it to the defendant's house and delivered it to a female servant there: that he never took more than one letter from his master to Captain Prescott; therefore that letter, taken in connexion with the evidence of Colonel Toone, must be the letter. Then, that not being produced, Colonel Toone goes on to say, that the note to Mr. Prescott also stated that he had received the papers which had been sent to him by Mr. Abington, and that he had signed the papers; "but "it occurred to me I had not seen the young man, contrary to my practice, "and that I had written to him my order that Mr. Prescott's cadet should not "pass until I had seen him." The letter to Mr. Abington is produced to you and it has the post-mark of Monday; the letter to Mr. Prescott is not produced: and on Monday he sent another letter. He is very anxious about it; and fearing the letter might be lost, he sent his servant again, the next morning, with the following. "The young gentleman nominated to my Madras "Cavalry nomination, for which I returned the papers yesterday, is not to "be presented and passed until Mr. Toone has seen him; and, with that "view, Mr. Toone will attend at Mr. Abington's office as soon as possible on "Monday morning." Signed "S. Toone." He says: "On that same Mon-"day I went to Mr. Abington's office at the India-House. I never saw the cadet, "and never have seen him. I remained at the office two hours, and he did "not arrive. I received no answer from Mr. Prescott to the letter I sent on "Saturday evening. I do not recollect any other conversation I had with "him. I did not enter into it, for I had the greatest regard for him. Mr. "Prescott did not give me any answer, either by letter or calling on me. I "was not apprized that any order had been given at the time by the Chairman "or Deputy Chairman:" they kept it very properly to themselves. Then he is cross-examined by the Counsel for Mr. Prescott; and he says, there was an inquiry among the Directors afterwards: that the Directors dine together on court days. That is all immaterial.

Then the next witness called is Edward Drake Back, the young man who was to have the appointment. He says, he recollects being in town with his father, the latter end of April, or the beginning of May, 1827. He recollects going,

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going, on the morning of the 2d of May, to No. 8, Waterloo Place, Mr. Andrews' office: that he saw him there, and he believes he saw Mr. Sutton there. Mr. Sutton is in court, and says he believes he was one of the persons. There he saw the papers produced, A. and B.: and then he says that he wrote the answer to the fourth question, that is: "Who recommended you to "Sweny Toone, Esq. the nominating Director, for this appointment? Answer: Charles Elton Prescott, Esq.;" which name was in pencil, for him to write in ink. "I never before that heard the name of Captain Prescott or knew him." He looks at the other paper, B., and says that is his signature, "Edward "Drake Back." This, I think, was done on Wednesday morning. He also signs the other paper, which is the signature to the petition of Edward Drake Back, to the Directors, expressing his desire to go. That he left the two papers with those two persons. That one of them told him to go to the Monument Coffee-house, and they would be there almost as soon as he was. He returned to the Monument Coffee-house, and he afterwards waited about the India-House for his father, and he then afterwards went into the Cadet Office with his father. Some person desired him to go in, and said he was to be introduced to Mr. Prescott. He went into the room and saw a gentleman, but he cannot identify Mr. Prescott. Whoever that gentleman was, he merely asked him whether he liked to go, and whether he had ever been in the army. He says he knew very little about the arrangement: he only knew that the business was going on merely to detect these people. He says he wrote answers to the different queries.

Then the next person called is Frederick Haldane, a clerk in the Cadet-Office, who says, "in the month of April 1827, Mr. Prescott sent for me, and "when I came he asked me if I understood that letter. I said I did. I took "up the letter to the office, and deposited it in the case where it is usual to "deposit such letters. He desired me to write it off: that is, I mark off the "appointment in the book." He did so, and that denoted that Colonel Toone's nomination was transferred to the defendant. He saw Colonel Toone in the office on the Monday following: he thinks he also saw him on the Saturday. He said, he lamented the circumstance of having lent Mr. Prescott the nomination, but directed that the gentleman was not to pass till he had seen him. "On the "2d of May a paper was brought to my office,

"which

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" which I immediately took and gave it into the hands of the Deputy Secre- " tary." Then the papers A. and B. are produced. I will direct your attention to them presently.

Then the next witness is Edward Sharp, who is a clerk in the Cadet-Office. In consequence of a message he attended upon Mr. Prescott on the 28th of April in his room. He produced a note from Colonel Toone, intimating a compliance with his wish to give him an appointment, and for the papers to be sent up to Colonel Toone for his signature: " he also produced the paper " marked A. and asked me if it was complete." He says, " I told him it was " not complete; that the letter of recommendation was not filled up, and the " fourth question was not answered: the other parts were complete. He then " asked me how the letter of recommendation should be filled in. I said, " if Colonel Toone signs the nomination, Captain Prescott ought to sign the " first letter of recommendation." It seems they are not both to be signed by the same person. " He said, 'is not that irregular:' I said that it was; but that " since Colonel Toone was to sign the nomination, it was necessary for him, " Mr. Prescott, to sign the letter, as I presumed Colonel Toone knew nothing " of the other parties. I also filled in the fourth question by the desire of Captain " Prescott, and he then signed the letter." He says, " he had asked me to " fill in the letter. I did so, and he signed it." And then that recommendation is this: " Gentlemen, I do hereby declare, upon my honour, that I " received the nomination of a Cadet for the Madras Cavalry from Sweny " Toone, Esq. gratuitously, and that I have given it gratuitously to Mr. " Edward Drake Back, with whose family and connexions I am well " acquainted." That is signed by himself, " C. Elton Prescott."

Then the witness said something about a conversation between them, as to the writing of the letters; but the witness was so indistinct in his answers, and represented he had received the same answer in two or three different forms, that it seems to me you could not rely upon that part of the conversation, and our safer course is to take that part that the witness speaks to without hesitation. " He directed me to fill up the nomination and send it to " Colonel Toone for signature: that, in consequence of a note he had " received from Colonel Toone, he would not give him any further trouble." He says, if Captain Prescott had signed the nomination, and the recommenda-

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tion had been signed by the person to whom it was given, it would not have given Colonel Toone any additional trouble. The Director's nomination is in these words; "I, Sweny Toone, Esq. being one of the Directors of "the East-India Company, beg leave to present the petitioner as a cadet for "the Madras cavalry, on Mr. Morris's nomination of the season 1826, pro- "vided he shall appear to you eligible for that station; and I do declare that "I have inquired into the character, connexions, and qualifications of Mr. "Edward Drake Back, and that, in my opinion, he is a fit person to petition "the East-India Company for the appointment he now herein solicits.— "S. Toone." He filled that in by Mr. Prescott's desire: he speaks without hesitation to that. "After I had filled in the nomination, Mr. Prescott de- "sired me to write a note transmitting them to Colonel Toone. I wrote a note "in Mr. Prescott's name, and took it to Mr. Prescott for his approval; but "he did not approve of it, and desired me not to write it in his name, but to "write it in the name of Mr. Abington, the chief clerk. He was not that day "at the office. I prepared a note accordingly in Mr. Abington's name, and "enclosed the two papers and directed them to Colonel Toone, and gave "them to the Commodore of the messengers, John Salter. Mr. Prescott "desired me to tell the messenger to take the packet to Colonel Toone, to "wait for an answer, and bring it to his, Mr. Prescott's residence." Then he says the note was in Mr. Abington's name, and mentioned only that the papers were transmitted to him by Captain Prescott's desire. Then he proves Mr. Prescott's signature. Then the papers were read. He says the filling up in February is in Mr. Abington's hand.

Then Salter is called, the commodore of the messengers, who produces a book in which he enters the direction of the letter and to whom he delivered it: and he says that he delivered it to Sullivan, with such directions as were delivered to him. Sullivan says, he received it and took it to Colonel Toone's house, and waited there, as directed, and took it back, not to Mr. Abington, but to Mr. Prescott's house.

Then Mr. Abington is called, who says he was absent from the office from indisposition on the 28th of April. That he was at the office either on the Monday or Tuesday following; and on one of those days Captain Prescott came into the office, and said he understood he had signed a wrong paper.

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"I replied, 'I was aware of that;' and said to him, 'you had no occasion "to sign the recommendatory letter, Colonel Toone had nothing at all to do "with it, having transferred it to you.' He desired me to stop the papers as "soon as they came to the office, and not to pass the young man, or suffer "him to be passed, until Colonel Toone had seen him. On Wednesday "I saw him again: he asked me if the young man had attended at the office "to be passed. I told him he had not. He said 'mind you let me have the "papers. Stop the papers as soon as they arrive, and do not suffer the "young man to be passed till Colonel Toone has seen him.'" On the Wednesday, when the young man was expected to present himself, Captain Prescott sent out a message from the court-room to know if the papers had arrived.

Then Mr. Wynn and Mr. Astell were called, who gave their evidence of their utter ignorance of all these matters, as you might have expected.

Then they further produce two other papers, marked C. and D., which are very important, I think, for your attention. These are copies of another appointment in the month of February. In that month of February Dr. Back was given to understand an appointment might have been had. The petition is signed by a person of the name of Bale, and then the Director's nomination is signed by Mr. Prescott. "I, Charles Elton Prescott, &c. "(*reading the nomination*) recommended to me by S. Sutton, Esq." Mr. Sutton signs the recommendatory letter: "Gentlemen, I hereby declare, upon "my honour, &c." (*reading the recommendatory letter*). That is signed by Samuel Sutton; and then Mr. Prescott signs, what has been signed in the latter case, a declaration that he believes the answers to the questions to be correct.

Now that would have been the regular form to have been observed on each: the nominating Director signs, and the person who recommended the party to the nominating Director should sign the nomination. That course has not been pursued upon the present occasion. Colonel Toone signs the nomination, and signs finally his belief that the answers are true, and Mr. Prescott signs the recommendatory letter. Why that was done does not very distinctly appear; certainly it is contrary to the usual practice in doing the thing. Whether he did not choose that Mr. Sutton's name should appear again as the party

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party recommending to himself, he having so recently given him a nomination, does not appear, but he departs from that.

Now, in the address made to you by the learned Counsel on behalf of Mr. Prescott, great reliance was placed upon that which Mr. Prescott did on the Tuesday and Wednesday, namely, going to Mr. Abington and desiring that the young man might not pass till Colonel Toone had seen him: and it is exceedingly difficult to account for that, unless he had received the letter that Colonel Toone says he had written and sent by his servant, stating that he had himself written to Mr. Abington to say that the young man should not pass. If Mr. Prescott had received that letter, it would have been natural; if he had not received it, I do not see why he should interfere.

I have already intimated to you, that in order to convict the parties of the latter charge, it is not necessary you should be satisfied, speaking of the case of Mr. Prescott, that he himself was to share; but you cannot convict him on the earlier part of the charge, unless you are satisfied he knew, and had reason to know, the appointment was to be made: and if all this evidence satisfies you he must have known of the appointment that this person obtained from him in a very irregular way by means of Mr. Sutton and Mr. Andrews, for the papers passed through their hands, if all this satisfies you he must have had a guilty knowledge that a profit was to be made, then he ought to be found guilty. If you are not satisfied of that, then he ought not to be convicted of the earlier and more important part of the charge. But then comes the other part, which is a fit subject for your consideration, and to that I am obliged to call your attention; and that is that part which charges that all these defendants conspired to procure false representations to be made to the Court of Directors, that Edward Drake Back was a person with whose family and connexions Mr. Prescott, at the time that false representation was made, was well acquainted, for the purpose of obtaining this cadetship for him, whereas, the defendants knew all the time that the family and connexions of Mr. Back were entirely unknown. That is quite a substantive distinct charge: and whatever your opinion may be, as to the conspiracy or combination to obtain this presentation, to himself or any of them, if you think they concurred in procuring this representation to be falsely made by Mr. Prescott to the Company, as to his knowledge

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knowledge of the young man and his family and connexions, if you think that they all intended to do it falsely and corruptly, and not from a mere blunder or mistake (that is not the question), if they had all the same guilty purpose, whatever your verdict may be upon the other part of the case, Mr. Prescott ought to be found guilty upon this: but unless you are satisfied of his guilt upon one or the other part of the charge, if doubt remains upon your minds, you ought to place considerable weight upon the character given him. A great number of respectable gentlemen in the city of London have concurred in stating, that up to this time Mr. Prescott had borne an excellent character for honour and integrity: a kind-hearted and honourable man. They put it in different phrases, but that is the substance of it. A higher character could not have been given to any body; and if the evidence leaves doubt in your minds of his guilt, that character ought to turn the scale: but if the evidence leaves no doubt, then, although he may have for so many years borne this high character, he may at last have fallen into error and guilt. If you are satisfied of his guilt, you cannot do otherwise than say he is guilty: if you have any doubt you will acquit him. As to the case of Despard, you will probably agree with me in thinking there can be no doubt.

The jury consulted together for twenty minutes, and then pronounced

John Edward Despard, Guilty;

Charles Elton Prescott, Not Guilty.